Nov. 15th 1872 No. 211 Field J.

Affirmed with a modification

Swayne J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~431.~~ 216

HENRY OELRICHS AND JOHN FREDERICK MAY, APPELLANTS,

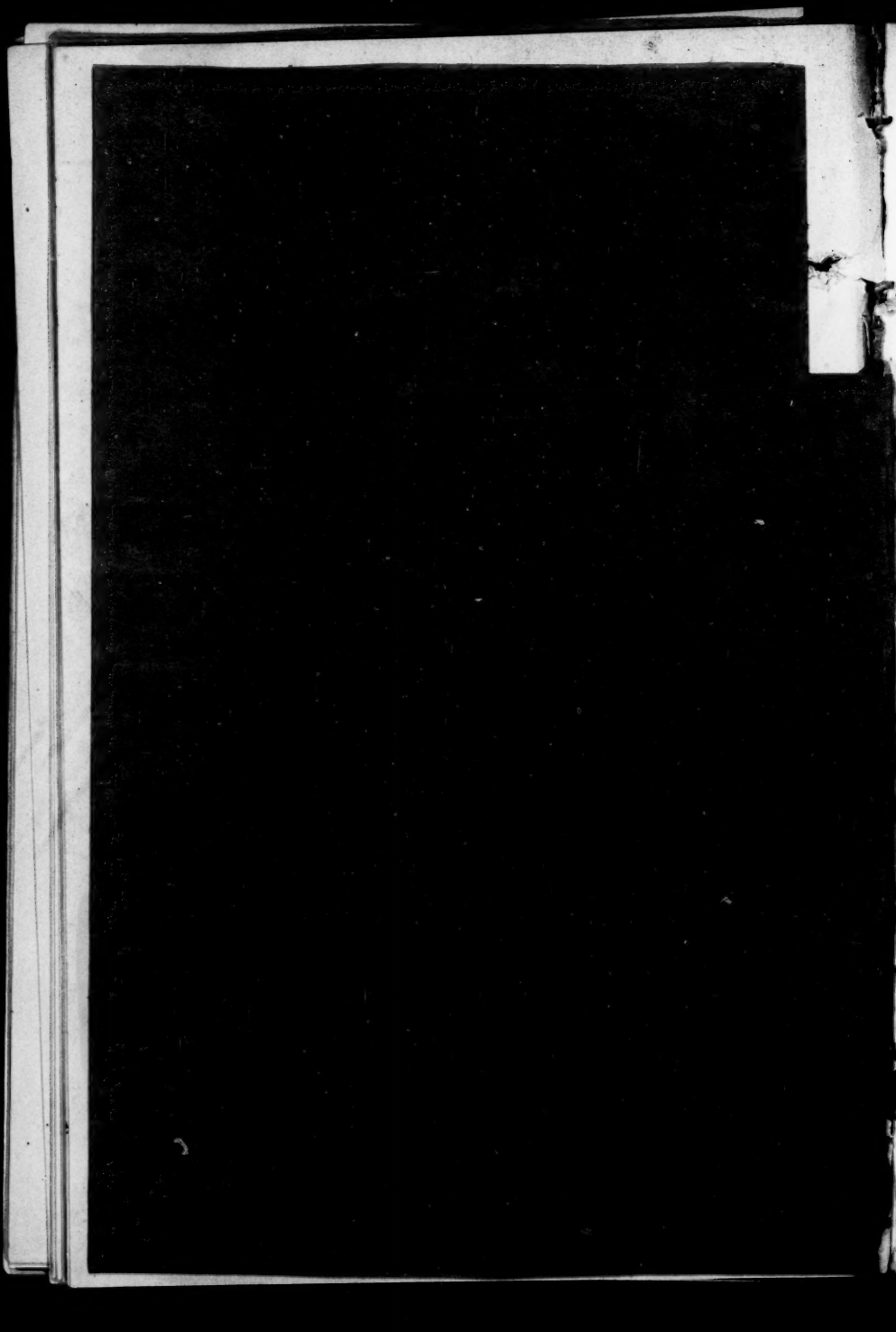
vs.

STEPHEN J. WILLIAMS, WILLIAM J. HOPKINS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 20, 1870.

Dec. 1871



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3 *Original bill of complaint.—Filed May 1st, 1868.*

In chancery, District of Columbia.

STEPHEN J. WILLIAMS, WILLIAM J. HOPKINS, A. P. Man, John M. Bass, and J. Dick Hill,
vs.
JOHN FREDERICK MAY, WILLIAM W. CORcoran, George W. Riggs, Hugh Caperton, Henry Oelrichs, et al.

No. 1274. Equity docket 9.

To the honorable the judges of the supreme court of the District of Columbia, sitting as a court of equity.

Humbly complaining, show unto your honors, your orators, Stephen J. Williams, William J. Hopkins, Albin P. Man, citizens of the
4 State of New York; John M. Bass, a citizen of the State of Tennessee; J. Dick Hill, formerly of Louisiana, now a citizen of the State of New York; that your orators, the said Williams, the said Hopkins, and the said Man are the duly qualified executors of William S. Wetmore, who was also a citizen of the State of New York, and died in said State; that your orator, John M. Bass, was the executor, duly qualified, of the late H. R. W. Hill, who died in the State of Louisiana, but that he subsequently renounced the executorship in the State last mentioned, and acted by procuration of the heir, devisee, and only child of the testator, J. Dick Hill, in the management and control of said estate; that your orator, J. Dick Hill, is the only child, heir, and devisee of H. R. W. Hill, who died in Louisiana on the day of August, 1853.

5 Your orators bring this their bill of complaint against John Frederick May, William W. Corcoran, George W. Riggs, Hugh Caperton, citizens of the District of Columbia, and Henry Oelrichs, a citizen of the State of Maryland, who, by his solicitor, R. J. Brent, esq., has agreed to answer in this jurisdiction as though a resident within the same.

And thereupon your orators complain and say:

That, on or about the 31st of May, 1856, one Albertus C. Spain, a citizen of the State of South Carolina, as committee of Mary McRa, filed his bill of complaint in the circuit court of this district, in the exercise of its chancery jurisdiction, in which it is charged that one William S. Wetmore held the legal title to certain certificates of indebtedness issued by the republic of Texas in his name, then lodged in the Treasury Department of the United States, the payment of which was assumed by this Government under the act of 9th September, 1850.

6 That the said Wetmore holds the one-tenth part of the amount due thereon, to wit, $81,772 08, as the right and property of one James Hamilton, as collateral security for a debt due by said Hamilton to said Wetmore, amounting to about $2,500.

That the Secretary of the Treasury is about to pay to the said Wetmore the amount due on said certificates.

That the said Wetmore also claims to hold the said one-tenth of the said certificates and proceeds to pay certain orders and assignments drawn by said Hamilton on said fund—one in favor of Corcoran & Riggs for about $30,000, one in favor of H. R. W. Hill, now deceased, (and whose administrator is prayed to be made a party,) amounting to about $58,000, and a claim in favor of Charles MacAlester, Josiah Randall,

Samuel Jaudon, James A. Bayard, Christopher Fallon, and William B. Reed, trustees of the Bank of the United States, for $12,051 48.

7 The bill then sets up an assignment made by said Hamilton to said Spain, and claims that this entitles him to priority and to an injunction "against the said Wetmore, his assignees, aiders, and abettors, restraining them, and each of them, from receiving" the said sum, or one-tenth part of said certificates, amounting to $81,772 08.

It is again alleged by said Spain that he is entitled "to enjoin and restrain the payment of the said one-tenth of the proceeds of said bonds and certificates filed by said Wetmore, in order that he may have a discovery in relation thereto, and be paid the amount of his claim from said funds."

As to the nine-tenths of the certificates filed by said Wetmore, the said Spain charged that Wetmore claimed to hold the same for the trustees of the Bank of the United States aforesaid; but that he, the said Spain, was entitled to recover out of the fund, by virtue of his assignment, the sum of $83,000, and he prays for an injunction, as to this sum, against the said Wetmore, his assignees, aiders, and abettors.

8 The bill of said Spain further charged that Frederick S. and Henry S. Holford, administrators of James Holford, late of London, had also filed a certificate of indebtedness of the State of Texas on the Treasury of the United States, No. 1164, in which Richard B. Cuyler, of the State of Georgia, and Gazaway B. Lamar, of the State of New York, claimed an interest; that there was due on this certificate the sum of $237,203 69, and that, by virtue of the prior equity of said Spain, he was entitled to recover out of that fund the sum of $45,000.

The bill then prays for a discovery from said Wetmore, the said Corcoran and Riggs, and the administrator of Hill, as to the origin, nature, and extent of their said several claims on the said one-tenth of said fund.

Also for a discovery from Frederick S. and Henry S. Holford as to their interest in the bond or certificate No. 1164, filed with the Secretary of the Treasury.

9 The bill then proceeds: "Your orator is advised and charges that he is entitled to enjoin and restrain the payment of said one-tenth part of the proceeds of said bond and certificate, filed by said Wetmore, and said sum of $45,000, part of the bond or certificate No. 1164, filed by said administrators of James Holford, and also the sum of $83,000, claimed by MacAlester, Randall, (and others,) trustees as aforesaid."

The prayer of the bill is: "That the said Wetmore, the said administrators of James Holford, and all and each of said defendants, their assignees, aiders, and abettors may be enjoined and restrained from asking for, demanding or receiving the sum or sums of money hereinafter specified as coming to them or any of them upon any bond or bonds, certificate or certificates, filed with the Secretary of the Treasury by them, with the view to claim the benefit of the act of Congress passed on the 28th February, 1855, chap. 129, that is to say: That the said Wetmore, his assignees, agents, aiders and abettors, may be enjoined and restrained from asking for or receiving the sum of

10 $84,722 08, being the one-tenth part of said three bonds or certificates, until the further order of the court."

The bill further prays that MacAlester, Randall, and others, be restrained and enjoined from asking for or receiving $83,000, part of the nine-tenths of the proceeds of the certificates filed by Wetmore, and that the said Holfords may be enjoined and restrained from asking

for or receiving from the Secretary of the Treasury $45,000, part of the proceeds of said bond or certificate No. 1164.

The bill thus concludes: "May it please your honor to grant unto your orator the United States writ of injunction, directed to the above-named defendants, and enjoining them and restraining them as herein before specially prayed."

All of which will more particularly appear by reference to said bill now on file.

On the back of this bill is endorsed the order of the judge, that on filing a bond in the penalty of $20,000, in the usual form, with two securities, approved by one of the judges, that "the injunction issue as prayed."

11 On the same day, to wit: 31st May, 1856, a bond was filed and approved by the court, in the sum of $15,000, signed by John Frederick May, a citizen of this District, and Henry May, then a citizen of Maryland, now deceased, and who has no legal representative in this District, which, reciting that Albertus C. Spain is about to obtain an injunction for the circuit court of the District of Columbia, or Washington county, in equity, enjoining them, their assignees, aiders and abettors, from asking for, demanding or receiving from the Secretary of the Treasury certain sums of money, on said writ of injunction mentioned, bind themselves jointly and severally, to pay such damage as the said obligees, or any of them, shall incur by "granting of this injunction."

A writ of injunction was then issued, which was served upon said Wetmore and others; and on the 17th June, 1856, the complainant dismissed the injunction, so far as it related to the sum of $83,000, part of the nine-tenths of the certificate filed by said Wetmore.

12 For a more accurate description, your orator files as Exhibit A, and makes the same a part of this bill, the order of injunction, the bond and its approval, and the writ of injunction.

Your orators further charge that subsequently, to wit: About the 17th January, 1859, the said Spain dismissed his injunction as to Mac Alister, Randall and others, trustees of the Bank of the United States, for the sum of $12,051 40, aforesaid, part of the one-tenth; and the said trustees, then and there, released all claim on said injunction bond, and wholly withdrew from the controversy.

Your orators further show that answers were filed to the bill of said Spain, by said John M. Bass, as executor of said H. R. W. Hill, and subsequently, by your orator, J. Dick Hill, in his own right, as sole heir and devisee of said H. R. W. Hill, asserting his right, to be paid out of the one-tenth, the amount of the claim set up in said answer, which had been notified to said Wetmore, and which he agreed to pay out

13 of the proceeds of the said one-tenth of the fund aforesaid. The date of filing said answers will particularly appear by reference to the same; answers were also filed by said Corcoran & Riggs, and the other defendants named in said bill.

Your orators further show that in obedience to an order of the said court, made on 24th March, 1859, requiring further security for the injunction issued, the said Spain filed another bond, dated 23d April, 1859, in the penalty of $20,000, and signed by the said Albertus C. Spain, a citizen of the State of South Carolina, and Henry Oelrichs, aforesaid, by which they bound themselves, jointly and severally, to answer all "damages, costs, and charges, that shall be occasioned by said writ of injunction;" for a more full description of which reference is here made to Exhibit B, prayed to be taken as part of this bill, recit-

ing the above order; the above bond, together with the order of the judge approving said bond and directing it to be filed in lieu of
14 the bond heretofore filed, reserving the right to the obligees to have recourse to the original bond for interest heretofore accrued, at the election of the obligees.

Your orators further show unto your honor, that on the hearing of the case so made by the bill of said Spain, and on an agreed statement of facts, the court, to wit, on 1st February, 1861, entered a decree by which it is, inter alia, adjudged, that the said Wetmore was from the 16th September, 1850, the holder of the legal title to the certificates, the payment of which was enjoined, and held the one-tenth of the fund, as trustee, to pay the said Hamilton's assignments or drafts upon him, and, proceeding to settle the premises of the several claimants, it directed the auditor:

1. To state and allow said Wetmore's claim for $2,500 with interest.

2. To allow the claim of Corcoran and Riggs, for $25,000 with interest, until the whole sum reaches $30,000, if it reaches that sum before the day of audit.

15 3. To allow the representatives of H. R. W. Hill, assignee of J. Robb & Co., the sum of $33,500 with interest, preferring the creditors in the order named above.

That under this direction of the court, the auditor made his report on the 2d February, 1861, showing the amount due in the

Treasury		$72,505 12
1. Due to Wetmore, principal & interest		4,333 66
		$68,171 46
2. Due Corcoran & Riggs:		
Principal	$25,000 00	
Interest	15,533 33	
	$40,533 33	
Limit on this claim on the fund as prescribed by the court		$30,000 00
		38,171 56
3. Representatives of Hill:		
Principal	$33,500 00	
Interest	18,957 00	
	$52,457 00	
The whole balance of the fund being	38,171 00	$38,171 56

The same is absorbed by this 3d claim, leaving no surplus and
16 nothing to pay the balance due on this claim of $14,285 54.

To this report, exceptions were filed by the said Spain, and by the said Wetmore. Exception was also filed by said Corcoran & Riggs, on the ground that the auditor reported to be paid to them the sum of $30,000 only, and not the sum of $40,533 33, which the report shows is the amount of principal and interest due on their debt.

And your orators further show: that on the hearing of said exceptions, to wit, on 19th February, 1861, the court entered its final decree, overruling the exceptions, and confirming the report in all things, and by which decree it is further adjudged, "that the said Wetmore is entitled to receive the sum of $72,505 12, now in the treasury of the United States, and which said Wetmore was restrained from receiving by the said

injunction," and that the said Wetmore to retain the sum of $4,333 66, and that the next pay to Corcoran & Riggs, out of said fund, $30,000, the amount of their lien on said fund, and then pay to said J. Dick
17 Hill or P. Phillips, esqr., his solicitor, $38,171 46, being the residue of said fund towards the satisfaction of the debt of $33,500, with interest from 19th March, 1852.

The decree further dissolved the injunction granted in the cause, and directed the costs to be paid by complainant Spain.

For a more particular account of said decrees, report, and exceptions, your orators refer to the originals on file.

Your orators further show, that the only appeal taken from the decree was by the said Spain, and that on this appeal the decree was confirmed by the Supreme Court of the United States, at its December term, 1863, and is reported in 1 Wallace Reports, 604.

Your orators further show, that on the dissolution of the injunction the appeal not operating as a supersedeas, the said Wetmore, and the said Corcoran & Riggs were paid the full amounts decreed to them as aforesaid; and the said J. Dick Hill was paid the remainder of
18 the said fund, $38,171 leaving still due to him by decree, $14,285 54.

Your orators have heretofore stated the dissolution of the injunction for $83,000, as a part of the nine-tenths of the said certificates, as also the dissolution of the injunction as to $12,051 48, as part of the one-tenth, upon which dissolution the said trustees of the bank of the United States executed their release to all damage. Your orators have now to add to this statement, that as to the injunction against the said Holfords, the said Spain, on the 22d July, 1856, released the injunction on the said certificate, No. 1164, as prayed for, to the extent of $5,140 40, and subsequently the said Spain entered into an agreement with said Holfords, said Lamar, said Cuyler, and said Hamilton, by which the injunction for $39,859 60, the remainder of the $45,000, was discharged and released and the said sum was received by the parties to the agreement, in full satisfaction, and the liability on the injunction bonds discharged;
19 this agreement by its terms, applies to Spain's case, No. 1171, The James R. & K. Company, 1173, and Pierce Butler's, No. 1186. Copy of said agreement is herewith filed as Exhibit E, and prayed to be taken as part of this bill.

It thus appears that Charles MacAlester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, James A. Bayard, trustees of the bank aforesaid, and Frederick S. Holford and Henry S. Holford, Gazaway B. Lamar, Richard P. Cuyler, have no longer any interest in or claim on said bonds.

Further complaining, your orators show, that on 30th May, 1856, the James River and Kanawha Company, a corporation organized under the
2 laws of Virginia, and located in said State, also filed their bill in said court, asserting a priority of payment out of the proceeds of the said one-tenth of the certificates aforesaid, filed by said Wetmore, in the Treasury of the United States by virtue of an assignment from said Hamilton, which bill prayed for an injunction to restrain the said William
20 S. Wetmore, William W. Corcoran, George W. Riggs, Elisha Riggs, j'r, James Robb, Jno. W. Bass, executor of H. R. W. Hill, James Hamilton, Samuel Jaudon, James A. Bayard, Christopher Fallon, and William B. Reed, Albertus C. Spain, committee of Mrs. Mary M. McRa, from receiving the amount due on said certificates filed in the Treasury, all of which will more particularly appear by reference to said bill.

In compliance with the order of injunction thus prayed for, a bond was filed dated 31st May, 1856, in the penalty of $5,000, signed by Thomas H. Ellis, who is a citizen of the State of Virginia, Hugh Caperton aforesaid, a citizen of this District, and Robert Ould, a citizen of the State of Virginia, which bond was on that date filed and duly approved by the court. For a more particular description of which, reference is made to a copy of said bond and approval, together with the writ of injunction issued thereon, herewith filed as Exhibit C, and made part of this bill.

21 Your orators charge, that by reason of the dissolution of the injunction, and the release by the trustees of the bank of the United States, they, the trustees, have no interest in the said injunction bond; that James Robb has no interest, as he was the assignor of the claim, represented at first by John M. Bass, executor, and subsequently by your orator J. Dick Hill, and that the rights and interests of said Hamilton, and said Spain, named as obligees in said bond were concluded by the decree made in Spain's case as above set forth.

Your orators further show that the complainant in this cause having failed to give an additional bond, as directed by the court, the following order was entered by the court:

An interlocutory order having been heretofore made in this court, to wit, on the 24th of March, 1859, that the complainant file an additional bond in the sum of $12,000, on or before the first Monday in May following, and in default thereof the injunction be dissolved, which

22 time was subsequently extended to the 9th of May, and it being now shown to the court that this additional bond has not been filed, it is, on motion of P. Phillips, esq., solicitor of Jno. M. Bass, one of defendants in said cause, this 11th of May, 1861, ordered and adjudged and decreed that the injunction heretofore granted in this cause be, and is hereby, dissolved, as of the 9th of May, 1859. Whereupon the complainants discontinued and dismissed their bill; all of which will appear by reference to the proceedings on file.

Your orators further show that on or about the 20th of June, 1856, one Pierce Butler, then a citizen of Pennsylvania, now deceased, also filed his bill in the said court, setting up an assignment of said Hamilton to him, by which he prayed an injunction against the said Wetmore and others, as to the one-tenth of the certificates filed by him, and against the said Holfords, for the certificate No. 1164, filed by them in the Treasury aforesaid.

23 In compliance with the order granting said injunction, to wit, on the 20th of June, 1856, a bond was filed of that date in the penalty of $2,500, executed by said Pierce Butler, by Sidney Webster, a citizen of the State of New York, and by C. & J. Chubb, then citizens of this District, but who both subsequently died utterly insolvent, having no legal representatives in this district. Copy of this bond and its approval by the court is herewith filed, marked Exhibit D, and prayed to be taken as part of this bill.

The obligees mentioned in this bond are the James River and Kanawha Company, James Hamilton, Henry S. Holford, Frederick S. Holford, William W. Corcoran, Elisha Riggs, W'm J. Wetmore, aforesaid, W'm Bass, executor, aforesaid, of H. R. W. Hill.

This bill was heard by agreement, with the bill of the said Spain, and is covered by the decree therein rendered and heretofore referred to; and for the reasons therein stated, and for the reasons hereafter recited in this bill, your orators allege that the said James River and

24 Kanawha Company and the said Holfords have no interest in the

bond last mentioned. Your orators further allege that the said Elisha Riggs is now, and has been for many years, a resident in the kingdom of France.

Yours orators admit that the said J. Dick Hill has received from William Wister and Peter Hollis, administrators of said Pierce Butler, who are citizens of the State of Pennsylvania, the sum of $2,500, the penalty of the bond. This payment was made on the 23d of March, 1868. The said administrators are hereby made parties defendant that they may assert their right to such apportionment and contribution as they may be entitled to.

Your orators now charge that, by reason of the said several injunctions and the proceedings thereon, *that* your orators have been damaged by the loss of principal and interest which would have been received but for said injunctions, together with reasonable costs and counsel fees in resisting said injunctions, less the amount acknowledged to have
25 been received from the representatives of Pierce Butler, as herein stated, and a reference is prayed to the master to state the account and settle the apportionment and contribution, as between the obligees, on the several bonds herein mentioned, according to the decree now prayed for, and which your honors may render in the cause.

But so it is, may it please your honors, the obligors in the several bonds refuse to pay the damages so claimed, pretending at times to deny the right of the said Hill because not specifically named in the bond, at others asserting that the bond did not authorize the said Wetmore to recover for any other damage than such as accrued upon his individual debt of $2,500; and, again, pretending that the said writ of injunction was never served upon said Hill, or any one representing his claim.

Your orators further show that the two bonds filed in Spain's case were prepared and drawn up in the handwriting of R. J. Brent,
26 esq., the solicitor of said Spain, who was a partner in law of Henry May, one of the obligors aforesaid; that Henry May is nearly connected, by marriage, with Mrs. McRa, for whose benefit the bill was filed in this case, and so, they are informed, is the said Oelrichs; that John Frederick May, another obligor, is the brother of said Henry May; and these bonds were filed by said Brent, acting for these several parties, in good faith, under the order of the court above recited, and for the purpose of complying with said order, and with the intent as shown by the record proceedings herein referred to, that they should be held as a security for the fund enjoined in favor of those beneficially interested therein.

Your orators therefore charge that these pretences are neither justified by the code of morals nor by the law of the land; that when these bonds were executed the parties obligors intended, as shown by the record aforesaid, that they should operate as a security to the fund
27 enjoined, and for the benefit of all interested in the fund, and that in point of law they do so operate; that all the proceedings show that Wetmore was the legal holder of the fund in which he had but an individual interest of $2,500, and that he held the remainder as trustee for Corcoran & Riggs, and the said Hill, whose orders he had to agree to pay out of this fund. The injunction prayed for and granted, as stated above, was to restrain the said Wetmore from collecting the whole amount of said one-tenth, "that the said Wetmore was so restrained, as well by the order of the court as by the service of the writ of injunction, and that this as effectually secured the non-payment of the fund as if all the assignees of the said Hamilton, the cestui qui trusts, had been severally enjoined and included in the bond.

Your orators, Stephen J. Williams, William J. Hopkins, and Albin P. Man, the representatives of said William J. Wetmore, now
28 allege that they are entitled to recover, in their representative character of the obligees, in the two bonds filed in Spain's case, for the benefit of said Hill, the damage of said fund, as held by Wetmore in trust, by reason of said injunction.

Your orator, Jno. M. Bass, alleges that he is entitled to recover for the benefit of said J. D. Hill, the amount of the bond given in the case of the James River and Kanawha Company.

Your orator, J. Dick Hill, maintains that, in his own right, he is entitled to enforce his claim against the said bonds, though, for greater certainty, he invokes the aid of complainants, who are named in the bonds.

Your orators further show, and so charge, that on the dissolution of the injunctions, the said Wetmore was paid the full amount awarded by the decree; and that the said Corcoran & Riggs were paid the full amount awarded to them by the decree; and that the amount paid to said Hill was only the amount heretofore stated.

29 Your orators further show that notwithstanding the said Corcoran & Riggs acknowledged the payment of the whole amount decreed to them on the date of the dissolution, they still claim a right to recover on these bonds. This your orators deny; but insist, if they have any such claim, it is, in law, subordinate to that of the claim set up in behalf of said J. Dick Hill.

Your orators insist that if the said Corcoran & Riggs have any claim, and the court should decide against the right of said Hill to be paid out of the two bonds given in Spain's case, because said Hill is not specifically named therein, that, inasmuch as the said Corcoran & Riggs are named in all the bonds, and the said Hill provided for only in the last bond given to Jno. M. Bass, as executor of his father, that the said Hill is entitled to a preference in the security last aforesaid.

Your orators are informed that some settlement has been made by the said Corcoran & Riggs, or one of them, with the obligors,
30 on the bond last aforesaid, and they pray that they may discover what amount, principal and interest, they have received, and when they, or either of them, so received the said amounts, reserving to your orators the right to object to said settlement as unauthorized and insufficient.

Your orators insist that if it should prove that there has been such a settlement, and that the same is binding on them, and that the obligors to said bond are legally discharged from liability, that they are now entitled to have the sum for which said obligors were liable decreed to be paid to them out of the two bonds in which said Corcoran & Riggs are named on the principals of equitable substitution.

Your orators, referring to the order heretofore recited allowing the 2d injunction bond filed in Spain's case to be substituted for the first bond, and under the reservation of said order, do hereby elect to insist upon their rights under the first bond.

31 Your orators, therefore, pray that upon ascertaining the true amount due to said J. Dick Hill for damages sustained by him by reason of said injunctions, that a decree may be rendered for the payment of such amount, and that the said several securities shall be marshalled, and the order of apportionment and contribution established conformable to the principles of equity in such case made and provided. Your orators further pray for such other and general relief as the nature of their case and the principals of equity entitle them to.

May it please your honors to grant unto your orators writs of subpœnas, directed to the said defendants, to wit: John Frederick May, Hugh Caperton, William W. Corcoran, George W. Riggs, and Henry Oelrichs, all of whom are of full and legal age, commanding them to appear and answer to the allegations of this bill; and, as to the representatives of the said Henry May, as to Albertus C. Spain,
32 Thomas H. Ellis, Robert Ould, William Wister, and Peter Hollis, Elisha Riggs, all of whom are now residents as aforesaid, and beyond the jurisdiction of this court, your orators pray that process may issue against them, so that they may be made amenable to the decree of this court, if they should come within the jurisdiction aforesaid.

Your orators will ever pray, &c.

JNO. N. OLIVER,
Compl't's Sol'c't'r.

EXHIBITS TO COMPLAINANT'S BILL.

EXHIBIT A.—*Order for injunction.*

Ordered, on filing a bond in the penalty of twenty thousand dollars in the usual form, with two securities, approved by one of the judges of this court, that the injunction issue as prayed.

May 31st, 1856.

By order of the court.

Test: JNO. A. SMITH, *Clerk.*

33 *Injunction bond.*

Know all men by these presents, that we, Albertus C. Spain, John F. May, and Henry May, are held and firmly bound unto James Hamilton, William S. Wetmore, Charles MacAlester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, James A. Bayard, Frederick S. Holford, Henry S. Holford, Gazaway B. Lamar, Richard P. Cuyler, William W. Corcoran, and George W. Riggs, in the just and full sum of fifteen thousand dollars, current money of the United States, well and truly to be made to them, their certain attorneys, executors, administrators, and assigns, to which payment we bind ourselves, and each of us, our executors, administrators, and assigns, jointly and severally, firmly, by these presents. Witness our hands and seals this 31st May, A. D. 1856.

Whereas the above-bound Albertus C. Spain is about to obtain
34 from the circuit court of the District of Columbia for Washington County, in equity, an injunction against the said named obligees, enjoining and restraining them, their assignees, aiders, and abettors, from asking for, demanding, or receiving from the Secretary of the Treasury certain sums of money in such writ of injunction mentioned.

Now the condition of the above obligation is such that if the above-bound Albertus C. Spain shall prosecute the said writ of injunction with effect, and satisfy and pay all damages and costs which the said James Hamilton, William S. Wetmore, Charles MacAlester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, James A. Bayard, Frederick S. Holford, Henry S. Holford, Gazaway B. Lamar, Richard P. Cuyler, William W. Corcoran, and George W. Riggs, or any of them, shall incur or sustain, by granting this injunction, the above ob-

ligation to be void; otherwise to be and remain in full force and effect.

JNO. FRED'K MAY. [L. S.]
HENRY MAY. [L. S.]

Witness:
R. J. BRENT.

I consider the sureties in this bond to be amply sufficient in estate.
JNO. A. SMITH.

May 31, 1856.

35 May 31st, 1856. Approved by the court.

Writ of injunction.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to James Hamilton, William S. Wetmore, William W. Corcoran, George W. Riggs, Charles MacAlester, Josiah Randal, Samuel Jaudon, James A. Bayard, Christopher Fallon, William B. Reed, Henry S. Holford, and Fred'k S. Holford, administrators of James Holford, greeting:

Whereas Albertus C. Spain, committee of Mary M. McRa, a lunatic, has filed his bill of complaint before the circuit court of the District of Columbia, sitting as a court of equity for Washington County; and, for certain reasons and considerations set forth and contained in said bill, you, the said W. S. Wetmore, the said Henry S. Holford, and Frederick S. Holford, administrator of James Holford, and all and each of your assignees, aiders, and abettors, are hereby restrained and par-
36 ticularly enjoined from asking for, demanding, or receiving the sum or sums of money hereinafter specified as coming to you, or any of you, upon any bond or bonds, certificate or certificates, filed with the Secretary of the Treasury by you, or any one for you, with a view to claim the benefit of an act of Congress passed on the 28th February, 1855, chapter 129; that is to say, that you, the said W'm S. Wetmore, your assignees, aiders, and abettors, are hereby enjoined and restrained from asking for or receiving the sum of $81,722 08, being the one-tenth part of three bonds or certificates filed by you, the said William S. Wetmore, with the Secretary of the Treasury, until the further order of this court; and you, the said Charles MacAlester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, and James A. Bayard, and the said William S. Wetmore, and all and each of your assignees, agents, aiders, and abettors, are hereby en-
37 joined from asking for or receiving the amount of $83,000, part of the one-tenths of the proceeds of said three bonds or certificates filed by said William S. Wetmore with the Secretary of the Treasury, as aforesaid, until the further order of this court; and you, the said Henry S. Holford, and Frederick Holford, your assignees, aiders, and abettors, are hereby enjoined and restrained from asking or receiving from the Secretary of the Treasury, or other officer of the United States, $45,000, part of the proceeds of the bond or certificate No. 1164, filed by you with the Secretary of the Treasury, until the further order of this court.

Herein fail not, as you will answer the contrary at your peril.

Witness the Hon. James Dunlop, chief justice of said court, this 30th May, 1856.

Issued 31st May, 1856.

J. A. SMITH, *Clerk.*

R. J. BRENT.

(Endorsed:)
Enjoined. G. W. Riggs, W. W. Corcoran, William S. Wetmore, and Christopher Fallon.

J. D. HOOVER, *Marshal.*

JUNE 2D, 1856.

38 EXHIBIT B.—*Order for additional bond.*

And afterwards, on motion of the defendants, by their solicitors, and upon inspection of the recoro*r*d it appears to the satisfaction of the court that there is not sufficient security to indemnify the defendants for their costs and damages in the event of the said injunction being dissolved. It is now, this 24th March, 1859, by the court ordered, that the complainant do, on or before the first Monday of May next, file with the clerk of this court his bond in the penalty of twenty thousand dollars, with sur*i*ties to be approved by this court, or one of its judges, conditioned to pay to the defendant such costs and damages as they may respectively sustain by reason of the injunction in case it be dissolved; and that if such bond be not filed on or before the said day that the injunction be, and the same is, hereby dissolved, which said order was made and passed by the court on notice to the counsel
39 of the complainant, and after hearing him in the premises; and the said court afterwards, to wit, on the 2d May, ordered that the time within which the complainant was required to file a new injunction bond be, and is, extended to the 9th May, instant.

And on the 5th May, 1859, the said complainant, by his solicitor, filed in court here the following bond.

Second injunction bond.

Know al' men by these presents, that we, Albertus C. Spain, of Sumter, South Carolina, as committee of Mrs. M. M. McRa, and Henry Oelrichs, of Baltimore, State of Maryland, are held and firmly bound unto William S. Wetmore, Frederick S. Holford, and Henry S. Holford, administrators of James Holford, Gazaway B. Lamar, Richard P. Cuyler, William W. Corcoran, and George W. Riggs, in the full and just sum of twenty thousand dollars, to which payment well and truly to be made and done, we bind ourselves, and every one of us; I, the said
40 Albertus C. Spain, a committee of the said Mrs. M. M. McRa, and I, the said Henry Oelrichs, myself, my heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this twenty-third day of April, anno Domini 1859.

Whereas the above bounden Albertus C. Spain has obtained, as committee of said Mrs. M. M. McRa, an injunction from the district court of Columbia, for Washington County, to restrain the above-named obligees from demanding or receiving certain sums of money mentioned in said writ of injunction; and whereas, since the obtaining said writ of injunction, divers portions of said moneys as enjoined have been released and paid over to parties respectively thereto entitled, but the residue of said money still remain under and subject to said writ of injunction.

Now the condition of the above obligation is such, that the said Albertus C. Spain, as committee as aforesaid, shall prosecute the said writ of injunction with effect, and satisfy and pay as well the
41 costs, damages, and charges as shall occur in the said circuit court of Washington County, as all costs, damages and charges as shall be occasioned by the said writ of injunction, unless the said

court shall decree to the contrary, and shall in all things obey such order and decree as the said court shall make in the premises, then the obligation to be void and of no effect; otherwise to be and remain in full force and virtue.

ALBERTUS C. SPAIN, [L. S.]
Com. Mrs. M. M. McRa.
HENRY OELRICHS. [L. S.]

Witnessed—as to A. C. Spain,
T. B. FRAZER.
As to Henry Oelrichs, by—
R. J. BRENT.

I consider the above bond as amply secured by Mr. Oelrichs, who is well known to me.
May 2, 1859.

R. J. BRENT, *Solicitor.*

Order of court.

With consent of parties, by their solicitors, ordered this 2d May, 1859, that this bond is approved, and ordered to be filed in lieu
42 of the injunction bond heretofore filed in the suite of the said A. C. Spain, reserving the right of the obligees to have recourse to the original bond, filed by said Spain, for interest theretofore accrued at the election of the obligees, and for no otherwise.
By order of the court.
Test: JOHN A. SMITH, *Clerk.*

I am well acquainted with the value of the estate of Mrs. Mary M. McRa, in South Carolina, and hereby certify the value of the same is not less than one hundred thousand dollars. I also knew that Mrs. McRa is a confirmed lunatic, and has been so for many years.
Baltimore, April 30th, 1859.

HENRY MAY.

I am well acquainted with Henry Oelrichs, of the firm of Oelrichs & Lumace, of this city, and hereby certify that he is, in my judge-
43 ment, a sufficient surety for the penalty of the foregoing bond.
Baltimore, April 30, 1859.

HENRY MAY.

EXHIBIT C.

Know all men by these presents that we, Thomas H. Ellis of Richmond, Virginia, Hugh Caperton, and Robert Ould, of Georgetown, District of Columbia, are held and firmly bound to William S. Wetmore, William W. Corcoran, George W. Riggs, and Elisha Riggs, j'r, James Robb, John M. Bass, executor of H. R. W. Hill, James Hamilton, Thomas Lynch Hamilton, Samuel Jaudon, James A. Bayard, Christopher Fallon, and W'm B. Reed, and Albertus C. Spain, committee of Mrs. Mary Martha McRa, in the just and full sum of five thousand dollars, (5,000,) to be paid to the said W'm S. Wetmore, W'm W. Corcoran, George W. Riggs, Elisha Riggs, j'r, James Robb, John M. Bass, executor of H. R. W. Hill, James Hamilton, Tho's Lynch Hamilton, Samuel Jaudon, James A. Bayard, Christopher Fallon, and William B. Reed, and Albertus

C. Spain, committee of Mrs. Mary Martha McRa. and every of them, their attorney or attorneys, executors, administrators, and assigns, to which payment, well and truly to be made and done, we do hereby bind ourselves, and each of us, our and every one of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with or seals and dated this 31st day of May, in the year 1856.

Whereas the James River and Kanawha Company, of which the said Thomas H. Ellis is the president, hath filed its bill in the circuit court of the District of Columbia for the county of Washington, against the said W'm S. Wetmore, W'm W. Corcoran, George W. Riggs, and Elisha Riggs, j'r, James Robb, John M. Bass, executor of H. R. W. Hill, James Hamilton, Tho's Lynch Hamilton, Samuel Jaudon, James A. Bayard, Christopher Fallon, and W'm B. Reed, and Albertus C. Spain, committee of Mrs. Mary Martha McRa, praying an injunction to restrain them and each of them and their agents and attorneys from receiving any money at the Treasury of the United States for and on account of one-tenth of certain certificates of the stock of the State of Texas, named, one No. 1031 dated 9th November, 1849, for $457,380 principal, and interest of the same amount, and interest thereon, one No. 1038 dated 9th November, 1849, for $48,913 principal, and the same amount of interest, with interest thereon, and one No. 1231 dated 12th November, 1849, for $100 principal, and the same amount of interest, and interest thereon; and the said court hath ordered the said injunction to be issued.

Now the condition of the above obligation is such, that if the said James River and Kanawha Company shall well and truly prosecute the said suit with effect, and shall answer all damages and costs which the defendants or either of them may sustain by the granting of the said injunction in case it shall be dissolved, then the said obligation to be void; otherwise to remain in full force and effect.

THO'S H. ELLIS. [L. S.]
HUGH CAPERTON. [L. S.]
ROBERT OULD. [L. S.]

Approved by the court.
True copy. Test: JOHN A. SMITH, *Clerk.*

Writ of injunction.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to W'm S. Wetmore, W. W. Corcoran, George W. Riggs, Elisha Riggs, greeting:

Whereas the James River and Kanawha Company filed its bill of complaint against you and others, in the circuit court of the District of Columbia, sitting as a court of equity for Washington County, and for certain reasons and considerations set forth and contained in said bill, you and each of you, your agents and attorneys are hereby restrained, and particularly enjoined, from receiving from the Treasuary of the United States any portion of the one-tenth of certain securities or bonds issued by the Republic of Texas, and numbered and dated and for the amounts as follows, to wit: No. 1031, dated 9th November, 1849, for $457,380 and same amount of interest; No. 1038, dated 9th November, 1849, for $48,913 and same of interest, and No. 1231, dated 12th Novem-

ber, 1849, for $100 and same amount of interest, as the same are particularly set forth and described in said bill of complaint, without the further order of this court. Herein fail not, as you will answer the contrary at your peril.

Witness the Hon. James Dunlop, chief judge of the said court, this 30th May, 1856.

Issued this 3d day of June, 1856.

J. A. SMITH, *Clerk.*

BAXTER.

Enjoined: Wetmore, Corcoran, G. W. Riggs, Elisha Riggs, and J. M. Bass.

June 4th, 1856.

J. D. HOOVER, *Marshal.*

Service acknowledged 4th June, 1856. W. S. Wetmore, W. W. Corcoran, G. W. Riggs, and E. Riggs.

By CARLILSE, *Solicitor.*

Service acknowledged:

JOHN M. BASS.

EXHIBIT D.

48 Know all men by these presents that we, Pierce Butler of the city of Philadelphia, and Sidney Webster and Charles and John Chubb, of the city of Washington, D. C., are held and firmly bound unto the James River & Kanawha Company, unto James Hamilton, unto Henry S. Holford, and Frederick S. Holford, administrators c. t. a. of James Holford, deceased, unto William W. Corcoran, and Elisha Riggs, unto William S. Wetmore, unto J. M. Bass, executor of H. R. W. Hill, in the penal sum of twenty-five hundred dollars, ($2,500,) to be paid to the said obligees, their and each of their certain attorneys, executors, administrators, and assigns, jointly and severally. To which payment we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twentieth day of June, in the year eighteen hundred and fifty-six.

Whereas the above bounden Pierce Butler hath sued out of the circuit court of the District of Columbia the United States writ of
49 injunction, commanding and enjoining said defendants, and every of them, their and each of their agents, attorneys, and assigns, from demanding or receiving from the United States, or any officer, or agent thereof, the sum of $30,000, or any part of such sum, parcel of a certain certificate of the Texas debt, numbered 1164, in the name of James Holford, now deceased, such thirty thousand dollars being so much of said certificate as represents fifty-one sterling bonds which were originally the property of the said James Hamilton; and further enjoining and commanding the same parties not to demand or receive the sum of $10,000, parcel of the one-tenth of certain certificates of the said debt, in the name of said William S. Wetmore, the said one-tenth being originally the property and right of said James Hamilton.

Now, the condition of this obligation is such that if the said Pierce Butler shall pay and satisfy all costs and damages which may accrue to the above-named obligees, or any, or either of them, by reason of said

injunction, in case the same be dissolved, then this obligation to be void; otherwise in full force and virtue.

50 PIERCE BUTLER. [L. S.]
SIDNEY WEBSTER. [L. S.]
C. & J. CHUBB. [L. S.]

Signed, sealed, delivered in presence of—
CHA'S F. CONE, for Pierce Butler and Sidney Webster.
Witness to C. & J. Chubb:
W. P. WILLIAMS.

In my opinion, these sureties are amply sufficient.
J. M. CARLISLE.

EXHIBIT E.

ALBERTUS C. SPAIN
vs.
EXECUTORS JAMES HOLFORD ET AL. } No. 1171.

JAMES RIVER & K. COMPANY
vs.
SAME. } No. 1173.

PIERCE BUTLER
vs.
SAME. } No. 1186.

In the case first above-entitled of A. C. Spain against Henry Holford's executors, Gazaway B. Lamar, R. J. Brent, Hamilton and others, it is agreed by the respective parties herein named and acting herein—the said Spain by his solicitor R. J. Brent; the said executors of Holford by their solicitor J. R. Bradley; the said Lamar by his solicitor H. Winter Davis; and the said administrator of Hamilton by J. R.
51 Brent—that the injunction heretofore ordered, and now in force in said cause, to restrain the executors of Holford from receiving $39,856 60 from the Treasury, enjoined in said cause and claimed by them, be, and the same is hereby, dissolved; that the executors receive said sum of money, to wit, $39,859 60 from the Treasury of the United States, and thereout paid, first to the executors of J. Holford the sum of $15,521 15, in full satisfaction of the lien of said estate on said fund; second, to the said Gazaway B. Lamar the sum of $21,901, in full satisfaction of all liens which said Lamar, or said Cuyler, has on said fund; and also in full satisfaction of any and every claim or demand which they, or either of them, have or has on the estate of James Hamilton, deceased, for, by reason or on account of, any proceeding heretofore instituted, in any court or courts, or any State or States of the United States, against said Hamilton or his estate, for or on account of, or to secure or obtain satisfaction of, said debt in said cause mentioned, claimed by said Lamar to be due from said James Hamilton, in
52 his lifetime, to said Lamar, including also in said satisfaction all damages and losses which may have been, at any time, recovered by said Lamar against said Holfords, or his estate, in any of said courts; next, to pay over the residue of said sum of $39,859 60 to said R J. Brent, as administrator of said James Hamilton.

And it is further agreed that a copy of this agreement shall be filed

in each of the other said causes, and the same effect in them as if the original were filed therein.

And finally it is agreed that on the receipt of said sum of money from the Treasury of the United States, that the injunction bonds given by said Spain, so far as the same to the use of said named parties respectively, shall be, and the same is hereby, released.

R. J. BRENT,
Sol'r for Spain, and as Adm'r of James Hamilton.
JOSEPH R. BRADLEY,
Sol'r for Holford & Cuyler.
H. WINTER DAVIS,
Sol'r for G. B. Lamar.

53 *Summons to answer.—Issued May 1st, 1868.*

In the supreme court of the District of Columbia. May 1st, 1868.

STEPHEN J. WILLIAMS, WILLIAM J. HOPKINS, A. P. Man, John M. Bass, and J. Dick Hill, complainants,
against
JOHN FREDERICK MAY ET AL., DEFENDANTS.
} No, 1274. Equity.

The President of the United States to John Frederick May, William W. Corcoran, George W. Riggs, Hugh Caperton, & Henry Oelrichs, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office, on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

54 *Marshal's return to summons to answer.*

"Service acknowledged for Henry Oelrichs, May, 2d, 1868.
"R. J. BRENT,
"*For Def't.*"

Sum'd all.

D. S. GOODING,
Marshal.

MAY 5TH, '68.

55 *Cross-bill of W. W. Corcoran and Elisha Riggs.—Filed Aug. 19, 1868.*

In the supreme court of the District of Columbia. In equity.

STEPHEN J. WILLIAMS & AL.
vs.
JOHN FREDERICK MAY & AL.
} Doc. 9. No. 1274.

William W. Corcoran and Elisha Riggs, two of the defendants in the above-entitled cause, bring this cross-bill against Stephen J. Williams,

illiam J. Hopkins, Albin P. Mann, John M. Boss, and J. Dick Hill, e complainants in said cause, and John Frederick May, Henry Oehlchs, and Albertus C. Spain, defendants in said cause.

And thereupon your orators show unto your honors that, on or about he 31st day of May, A. D. 1856, one William S. Wetmore was the holder of three certificates of debt issued by the State of Texas, the payment of which had been assumed by the United States, for certain
56 large amounts of money, and had filed the same in the Treasury Department for payment under an act of Congress approved February 28, 1855, and the same were due, and were about to be paid under the act above cited when the proceedings hereinafter stated took place.

That of the gross amount due on said certificates nine-tenths were to be received to the use of the trustees of the Bank of the United States, and the remaining tenth was to be received to the use of one James Hamilton and his assigns, and amounted, as your orators believe, to more than $81,000, and your orators, by assignment of the said James Hamilton, were entitled to receive the sum of $30,000, and the said Wetmore had notice of said assignment, and had promised to pay to your orators the sum so assigned.

That, on the said 31st day of May, A. D. 1856, one Albertus C. Spain, as committee of Mary M. McRa, a lunatic, filed his bill in the circuit
57 court of the District of Columbia, in equity, setting forth that the said James Hamilton was indebted to him, as such committee, in the sum of about $83,000; that the said Hamilton had an interest in the said certificates, as well in the nine-tenths as in the one-tenth thereof; that the said Spain had an equitable lien upon all the said Hamilton's interest prior to that of all his assigns, as security for the said debt; and that the said Wetmore was about to receive the amount thereof from the Treasury, and pay over the same to the said Hamiliton or his assigns. The said bill further averred that Frederick S. Holford and Henry S. Holford has filed in the Treasury a certificate similar to those above mentioned, and in which Richard B. Cuyler and Gassaway B. Lamar were interested, and of which the said Spain was entitled to the sum of $45,000. And the said Spain in the said bill prayed that the said William S. Wetmore and the said Holfords, and the assigns of the
58 said James Hamilton should be restrained by injunction from receiving from the Treasury any of the moneys to which it was alleged the said James Hamilton was entitled, viz:

First. The one-tenth part of the certificates deposited by the said W. S. Wetmore.

Secondly. The sum of $83,000 out of the remaining nine-tenths of said certificates; and

Thirdly. The sum of $45,000 out of the certificates deposited by the said Holfords.

And your orators further show that in the proceedings in said cause as well in the bill of complaint as in the writs and injunction bonds hereinafter mentioned, the name of George W. Riggs was, by mistake, used instead of that of your orator, Elisha Riggs, who was the copartner of William W. Corcoran, and with him composed the firm of Corcoran & Riggs, who were the assignees of James Hamilton, as charged in the said Spain's bill of complaint, and who was intended to be restrained by the injunction prayed; and whereupon your orator, Elisha Riggs,
59 appeared and answered the said bill. And your orators charge that your orator, Elisha Riggs, was in said suit sued by the name of George W. Riggs, and by that name restrained by the writ of injunc-

tion issued in said cause, and indemnified by the bonds filed in sa cause as hereinafter stated.

And your orators further show that on the said 31st day of May, A. D. 1856, the said John Frederick May, together with one Henry May, since deceased, executed a bond, which was filed in said cause, whereby they bound themselves, jointly and severally, to the defendants in the said cause, among whom were your orators, in the sum of $15,000, conditioned for the prosecution of the said writ of injunction and payment of damages and costs in the usual form, a copy of which said bond is exhibited with the original bill of complaint in this cause. And thereupon the writ of injunction issued, addressed to all the defendants
60 in said cause, viz: To William S. Wetmore and Henry S. and Frederick S. Holford, who had deposited the certificates in question to James Hamilton, who it was charged was interested in all the said certificates; to your orator W. W. Corcoran and your orator Elisha Riggs, by the name of George W. Riggs, who, as the firm of Corcoran & Riggs, claimed under the assignment of James Hamilton a portion of the one-tenth of the said three certificates; and to Charles McAlister, Josiah Randall, Samuel Jaudon, James A. Bayard, Christopher Fallon, and William B. Reed, who, as trustees of the bank, claimed the remaining nine-tenths of the said three certificates deposited by the said Wetmore.

And your orators further show that afterwards, to wit, on the 19th day of January, A. D. 1859, the said Spain dismissed his injunction as to the trustees of the Bank of the United States, and the said trustees then retired from said suit, and released all claims upon the said injunction bond.

61 And your orators further show that on the 24th day of March, A. D. 1859, the said circuit court of the District of Columbia, upon motion of the solicitor for the defendants in said cause, being satisfied that there was not sufficient security to indemnify the defendants, ordered that additional security be given; and thereupon the said Alburtus C. Spain filed in the said cause a bond executed by himself and Henry Oehlrichs, whereby they became bound to the remaining defendants in the sum of $20,000, conditioned in the usual form, for the prosecution of said writ and payment of costs and damages, a copy of which bond is exhibited with the original bill of complaint in this cause.

And your orators further show that on or about the 22d day of July, A. D. 1856, the said Spain released from the operation of the said injunction the sum of $5,140 40 of the certificates filed by the Holfords, and afterwards, on the day of A. D. 18 , dismissed
62 his injunction as to the residue of the amount due on said certificate against the said Holfords, Cuyler, and Lamar, and those defendants thereupon released all claims upon the said injunction bonds, a copy of which agreement and release is exhibited with the original bill of complaint in this cause. And the said injunction continued in full as against the said Wetmore and your orators until the 19th day of February, A. D. 1861, when it was dissolved, and on the 16th day of April, A. D. 1861, your orators received the sum of $30,000, to which they were entitled by the assignment of said Hamilton, as hereinafter mentioned, out of the moneys accruing upon the three certificates so as aforesaid deposited by the said William S. Wetmore.

And your orators further show that on the 31st day of May, A. D. 1865, the Treasury Department was ready and willing to pay to the said W. S. Wetmore the money due upon the said certificates, and the said Wetmore was ready and willing, in that event, to pay over

to your orators their portion thereof, viz, the sum of $30,000; and your orators would have received the same on the day aforesaid had not they and the said Wetmore been restrained by the writ of injunction aforesaid from receiving the same. And by the writ aforesaid your orators were prevented from receiving the said sum, and deprived of the use and interest thereof from 31st day of May, 1856, till the 16th day of April, 1861, and thereby incurred damage to the amount of $7,308, besides $ of costs incurred in said cause. And your orators further show that on the 2d day of June, A. D. 1856, a writ of injunction was sued out of the circuit court of the District of Columbia by the James River and Kanawha Company, a corporation chartered by the State of Virginia, restraining the said William S. Wetmore and your orators and other defendants from receiving the one-tenth of the moneys accruing upon the three certificates deposited by the said W. S. Wetmore; and the said company filed in the said cause a bond executed by Thomas A. Ellis, Hugh Caperton, and Robert Ould,

64 in the penalty of $5,000, conditioned in the usual form, a copy of which bond is exhibited with the original bill of complaint in this cause, and the said injunction continued in force until the 9th day of May, A. D. 1859, but the order dissolving the same in due form was not made until the 11th day of May, 1861. And your orators by a settlement with the said company on the 4 day of September, 1867, received the sum of $5,000, the amount of the penalty of the bond filed by said company, and released the said company from all further liabilities to your orators on account of the costs and damages by them sustained by reason of the injunction so as aforesaid sued out by the said company. And your orators are willing to credit the said sum of $5,000 on account of the damages and costs so as aforesaid sustained by them by reason the injunction sued out by the said Spain, after deducting from the said $5,000 the costs and expenses of recovering the same.

65 And your orators had well hoped that the said Albertus C. Spain, John Frederick May, and Henry Oelrichs, obligors in the bonds herewith hereinbefore mentioned, would have paid and satisfied the damages and costs incurred by your orators in the premises, according to the tenor and effect of the conditions thereof. But now so it is, may it please your honors, that the said defendants so to do wholly neglect and refuse; all of which is contrary to equity and good conscience.

And your orators further show that besides the persons who were named in the bill of complaint of the said Albertus C. Spain as claiming an interest in the said funds so as aforesaid sought to be enjoined, one J. Dick Hill, the only child, heir and devisee of H. R. W. Hill, deceased, together with the executor of said H. R. W. Hill, filed and answer in said cause, claiming an interest in said fund; and upon final hearing, his claim was allowed, and a portion of the said fund was decreed to him.

66 And your orators further show that on the 1st day of May, A. D. 1868, the said J. Dick Hill, together with John M. Bass, executor of H. R. W. Hill and Stephen J. Williams, William J. Hopkins, and Albin P. Mann, executors of William S. Wetmore, filed in this court their bill of complaint against the obligors in the said injunction bonds, to wit: Albertus C. Spain, John Frederick May, Henry Oelrichs, and the representatives of Henry May, deceased, and Thomas H. Ellis, Hugh Caperton, and Robert Ould, and also against certain of the obligors named therein, among whom are your orators, praying that the said obligors may be decreed to pay and satisfy the damages and costs

by him sustained, and that your orators may discover the amount ceived by them from the James River and Kanawha Company, and the several securities may be marshalled, according to the principles equity; and your orators being made defendants to the said bi- together with the obligors in the said bonds, and claiming relief as to the same subject-matter as against their said co-defendants which can only be given upon a cross-bill filed against them, your orators pray that this their cross-bill be allowed by this honorable court, and that the same be heard with the original bill of complaint in this cause.

To the end, therefore, that the said defendants may answer the premises, and that the said Albertus C. Spain, John Frederick May, and Henry Oelerichs may be compelled by decree of this court to pay and satisfy the damages sustained and costs incurred by your orators in the premises, and that your orators may have such further relief as to your honors may seem meet—

May it please your honors to grant unto your orators the writ of subpœna of the United States directed to the said defendants, commanding them at a certain day, and under a certain pain in the said writ to be mentioned, to be and appear in this honorable court, then and there to abide, stand to, and perform such orders and decrees as may be made in the premises.

And your orators, &c.

JNO. D. McPHERSON,
Sol'r for Compl't.

Summons to answer cross-bill.—Issued August 19, 1868.

In the supreme court of the District of Columbia, August 19th, 1868.

WM W. CORCORAN ET AL. COMPLAINANTS, *vs.* S. J. WILLIAMS ET AL., DEFENDANTS. } No. 1274. Equity.

The President of the United States to Stephen J. Williams, William J. Hopkins, Albin P. Mann, John M. Bass, and J. Dick Hill, defendants.

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office, on or before the special term, to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Not to be found.

"D. S. GOODING, *Marshal.*"

OCT'R 13TH, 1868.

Answer of Def't W. W. Corcoran to original bill.—Filed Sept. 14, 1868.

In the supreme court of the District of Columbia.

J. WILLIAMS ET AL. *vs.* J. F. MAY ET AL. } In equity. Doc. 9. No. 1274.

The separate answer of William W. Corcoran to the bill of complaint of S. J. Williams and others.

70 This defendant, saving and reserving to himself all manner of exception to the errors and imperfections of the said bill, nevertheless, for answer to so much thereof as he is advised it is material for him to answer unto, says:

That he has no personal knowledge or recollection of the details of the several proceedings in equity set forth in the bill of complaint, but has no reason to doubt that they are correctly set forth in the said bill. He knows, and therefore admits, that he was made defendant to the three bills filed respectively by Albertus C. Spain, as committee of Mrs. Mary M. McRa, by the James River and Kanawha Company, and by Pierce Butler to restrain William S. Wetmore, this defendant and others from receiving certain moneys accruing upon certain certificates of the Texas debt assumed by the United States, and that the usual injunction bonds were given by the several complainants, and the writs of injunction were issued, directed to this defendant and others, restraining them from receiving any moneys accruing upon the said certificates.

71 This defendant believes and admits that the bonds so given and writs issued, and the orders of the court in relation thereto, are correctly set forth in the said bill of complaint.

This defendant admits that he has received from the James River and Kanawha Company, on the 4th day of September, 1867, the sum of five thousand dollars, on account of the damages and costs by him sustained by reason of the writ of injunction sued out by the said company as stated in the bill of complaint, and that he has released the said company from all further liability to him on account of the injunction bond by them filed.

As to the other matters and things set forth in the said bill of complaint this defendant has now no distinct personal knowledge or recollection, and while he has no doubt they are correctly stated in the bill of complaint he cannot admit them to be true.

And this defendant, further answering, that in consequence and by reason of the writs of injunction set forth in the bill of com-

72 plaint, the firm of Corcoran & Riggs, of which this defendant was a member, were restrained and prevented from receiving the sum of thirty thousand dollars, which sum the Treasury Department of the United States was ready and willing to pay to William S. Wetmore, on account of the said Texas certificates, and the said Wetmore was ready and willing to pay to them, but which they and the said Wetmore were by the said writs of injunction prohibited to receive, and by reason of said prohibition this defendant's firm were deprived of the use of said sum from the 31st day of May, 1856, till the 16th day of April, 1861, when, the injunction having been dissolved, they received the said sum, whereby they sustained damage to the amount of the interest of said sum for the period aforesaid, and their costs in said suit expended; which damages largely exceed the amount of money received, as hereinbefore stated, from the James River and Kanawha Company, by this defendant.

And this defendant denies the right of any of the complainant[t]s this cause to any priority over him in respect of his claim l
73 one of the obligees named in the injunction bond filed in t cause wherein Albertus C. Spain was complainant, to indemnifi tion for his costs and damages incurred by reason of the injunction i said cause, but claims to have the residue of the costs and damage sustained by his said firm, after deducting the amount received from the James River and Kanawha Company, satisfied and paid out of the penalty of said bonds; for which purpose he, and his said co-partner Elisha Riggs, file their cross-bill in this cause against the surviving obligees of said bonds. And having fully answered, this defendant prays to be hence dismissed with his costs, &c.

W. W. CORCORAN.

DISTRICT OF COLUMBIA, *County of Washington:*

Before the undersigned, a notary public in and for said county, personally appeared William W. Corcoran, and made oath that
74 the matters and things stated in the foregoing answer are true, to the best of his knowledge and belief.

In testimony whereof I have hereunto set my hand and notarial seal, this 22d August, 1868.

[SEAL.] WHITMAN C. BESTOR,
Notary Public.

Marshal's return to summons to answer X-bill.

"Not to be found.

"D. S. GOODING,
"*Marshal.*"

OCT. 13th, 1868.

75 *Answer of Henry Oelrichs and Jno. F. May, to original bill. Filed Oct. 22, 1868.*

Supreme court of the District of Columbia.

The answer of Henry Olerichs and John F. May, to the bill of Stephen J. Williams, and others.

These respondents, saving and reserving all and every exception to the bill of complaint by reason of the manifold and manifest insufficiencies thereof, for answer nevertheless unto so much as is material, saith, that true it is that the bill of Albertus C. Spain was filed in manner stated, and these respondents signed the injunction bonds, respectively, in the manner but not with the intention avowed in said bill.

These respondents further sheweth, that at the date of the filing of the bill of said Spain, and of the injunction bond first given in behalf
76 of said Spain, and at the date of the service and return of said writ of injunction, the said writ of injunction did not operate on or affect any bonds, certificates, or choses in action filed with the Secretary of the Treasury, in which the late H. R. W. Hill, or his representatives, had any title or interest whatever.

These respondents further sheweth, that if said named parties ever had any title or interest in any such bonds, certificates, or choses in action, it arose and accrued long after the return of said writ of injunction; and the injunction bonds given in behalf of said Spain are not, nor is either of them, liable in the premises.

And in order that the nature of the alleged interest and title of said named parties may be better understood, these respondents show that on the face of the bill filed in this cause it is claimed that the representatives of said Hill are greatly damaged by said writ of injunction, and that said injunction bonds are responsible for such damage,
77 because the said Bass or the said J. Dick Hill, in right of said H. R. W. Hill, and claiming under him, were prevented by said injunction from realising certain monies belonging to them by virtue of certain orders, and assignment made to them by one James Hamilton, of and in respect to certain obligations of the State of Texas, then in the hands and under the control of William S. Wetmore, who was entrusted with the collection thereof. These respondents show that the pretended interest of said Hamilton originated in manner following:

As to so much and such parts of the said bill as state that the said William S. Wetmore was about to receive from the Secretary of the Treasury a large sum of money, the proceeds of three bonds or certificates of debt due by the State of Texas to the said Wetmore, and the interest of the said James Hamilton in said certificates, and the claim of these complainants to receive part of said fund, the defendants say to the best of their knowledge, information, and belief that the
78 said statements are not true; that neither the said William S. Wetmore, nor the said James Hamilton, nor the assignees of either of them, had any right thereto or to any part thereof; they deny the same, and require the complainants to produce such proof as they may have in support of the said statements. And further answering, they say that the trustees of the Bank of the United States were the bona fide owners and holders of 378 bonds for £250 each, and one for £10,-126 13 4c., issued by the State of Texas, and being indebted to the said William S. Wetmore in a certain large sum of money, to secure the same they hypothecated with the said Wetmore the said bonds; afterwards the said Wetmore, so holding the said bonds as mortgagee, deposited them with the said State of Texas, and received in lieu thereof three several certificates of debt bearing interest at ten per cent. per annum, to wit:

No. 1051,	date 9	Nov.,	1839,	for.....	$457,380
1038,	do	do	do	.....	48,913
1231,	do	do	do	.....	100
					506,393

79 being the same mentioned in said bill, and while the said certificates were still in the possession, as aforesaid, of said Wetmore, to wit, in the year 1845, the said James Hamilton represented to said trustees that he was engaged in prosecuting outstanding claims against Texes, and could be of essential service in securing their payment and desired to obtain the agency for and management of the said claims of said trustees. He made upon the trustees so strong an impression of the value of his services in that behalf, that they were induced to accede to his proposition; and accordingly, on the 16 October, 1845, Mr. T. S. Taylor, the secretary of the board, was instructed to, and did in fact, address and deliver to the said James Hamilton a letter, of which they herewith file a true copy as part of this answer, marked defendant's Ex. No. 1.

By the said letter it will be seen that the said trustees agreed to pay

to the said James Hamilton ten per cent. on whatever sum
80 might, through his instrumentality, be recognized and paid to them on account of the said certificates over and above the sum due by them to said Wetmore, and the time within which the said employment was limited was not to exceed two years from that date; that is to say, the 16 October, 1847. They further show that the sum due and paid as hereinafter stated, to said Wetmore, was $120,514 84, and the said ten per cent. was to be calculated on the difference between that sum and the amount which might be so as aforesaid paid through the instrumentality of said Hamilton. Further answering, they say they are not advised, nor have they any means by which they can ascertain, what services were, in point of fact, rendered by said Hamilton in the prosecution of his said agency, or whether, in point of fact, he did anything to secure the recognition and payment of the said certificates. They believe that he was diligently engaged in prosecuting some claims of his own upon the said State, but whether he united
81 in those efforts the recovery of said certificates they do not know. Further answering, they show that the two years limited in said agreement of the 16 Octo., 1845, expired without the said Hamilton having procured any results beneficial to said trustees. The State of Texas was admited into the Union, and Congress in 1850, passed an act for the settlement of her boundaries, and therein assumed the payment of certain of her debt. The said certificates were still under the said mortgage of the said Wetmore, and so held by him. The trustees of the Bank of the United States were informed by said Hamilton that the said debts were through his instrumentality placed among those so as aforesaid assumed to be paid by Congress. Relying implicitly on this statement of said Hamilton, and being desirous to compensate him for his trouble and services in their behalf they determined to allow him the same rate of compensation as they had originally agreed to allow, although the two years limited in their said original agree-
82 ment had then fully expired, and accordingly they directed their secretary to write to said Wetmore to that effect, which they accordingly did, and they file herewith, as a part of this answer, a true copy of said letter, bearing date the 16 Sept., 1850, marked Exh. No. 2.

Further answ'ing, they say said trustees afterwards fully paid their said debt to said Wetmore, and received from him the said certificates and an assignment of 9–10 of the interest therein, he reserving the other 9–10 in consequence of the said letter of the 16 September, 1850, to meet any claim which might be set up thereto by James Hamilton. They further say that in truth and in fact the said certificates were not among the debts provided for and paid in and by the said act of Congress, and the whole consideration by which said trustees were induced to make this last-mentioned promise entirely failed, and the said promise was made solely on said false representation of said Hamilton.

83 Respondants further say there was no promise, or agreement, or obligation, express or in any manner implied, other than is contained in the said two letters under and by virtue of which the said Hamilton ever had any claim upon said fund, and that the first of said promises is in its terms limited to the 16 October, 1847; and the second is founded on representations of the said Hamilton, and his assignees cannot justly claim any right or interest in the said fund, or any compensation at all for any services rendered in respect to said certificate s or otherwise.

Your respondants further show that there was no bond, certificate, chose in action or money, from the recovery of which the said defendants

named in said writ of injunction were by said writ enjoined, other than the one-tenth part referred to and mentioned in said Exhibits 1
84 and 2. And your respondents are advised and charge that by reason of the misrepresentations and fraud of said James Hamilton, and by the non-performance of his undertaking in the premises, he was not entitled, at the date of said writ of injunction, or at its return by the marshal, to receive or claim said one-tenth part, or any portion thereof; nor were the said Wetmore and the said Corcoran and Riggs, the said representatives of H. R. W. Hill, or any of them entitled, as assignees of said Hamilton at the dates last aforesaid, to ask for, demand, or receive the said one-tenth part, or any portion thereof. And these respondants charge that neither of said injunction bonds are chargeable in the premises, because no damage was occasioned by the service of said writ of injunction.

These respondents further show that the employment by the trustees of the Bank of the United States, in manner and form, and for the
85 contingent compensation set forth in said Exhibits Nos. 1 and 2, was for the object and purpose of obtaining legislation, or to use personal and secret influence on legislators to procure the payment of the claim of said trustees as set forth in said exhibits. And these respondents are advised and charge that by reason thereof, as well as by reason of champerty appearing on the face of said agreement, neither the said Hamilton or his said assignees could have maintained any action or title, or acquired any interest under or by virtue of the agreement therein set forth at the date of the service and return of said writ of injunction.

These respondents further show that long after the service and return of said writ of injunction, and while the said Spain was claiming as against the said trustees of the Bank of the United States, the whole of said one-tenth part, and while the said claim and pretensions of
86 said Spain were resisted and denied by said trustees, on or about the 17th January, 1859, a compromise of said matter in suite was made and effected between said Spain and said trustees whereby, in consideration of the release by said Spain of all claim on his part to the sum of $12,051 40, part of said one-tenth claimed by him as aforesaid, the said trustees then agreed to abandon all claim on their part to the residue of said tenth part; and in pursuance of said agreement the said Spain dismissed his bill as to said sum of $12,051 40, which was thereupon paid to the said trustees; and the said trustees released all recourse on their part against the injunction bond first given by said Spain, and finally withdrew from said controversy.

Your respondents are advised and charge that, but for said compromise and abandonment of their defence by the said trustees, neither the said Hamilton or his assignees, Wetmore, or Corcoran and Riggs, or the representatives of said Hill, or any of them, would have
87 realized one cent of their said claims; and it was only by virtue of said compromise made by said Spain, and which enured to the benefit of said parties as assignees of said Hamilton, that the sums of money admitted in the bill of complaint to have been paid, were realized.

These respondants are advised and charge, that inasmuch as there was, at the date of the service of said writ of injunction, no fund to be affected by it, and as the fund received by said representative of Hill, and by said Wetmore, and said Corcoran & Riggs, arose and was created solely by and through the compromise and relinquishment aforesaid, that such ex post facto compromise could not retroact upon

the writ of injunction, or subject either of said injunction bonds to liability for damages in the premises.

Your respondents aver and show that so far from the bonds of said Spain being liable for interest in the premises, the complainants were indebted to him and his said injunction suit for the recovery of
88 any part of their claims.

These respondents further deny the allegations of said bill, that the injunction bonds were filed as security for the benefit of all parties who might be beneficially interested. On the contrary it is averred by them that said bonds were intended, as shown on the face of the bill of said Spain and all the proceedeings thereunder, to be a security to the obligees therein named, and to the extent of their respective interests therein only; and the representatives of said H. R. W. Hill were not named as obligees therein, or intended to be restrained by said injunction suit, as it is expressly shown on the face of the injunction bill; that they were not even made defendants; but these respondents are advised and charge that being securities in said bonds they are entitled to stand on the very letter and legal import of said bonds, and they cannot be held liable upon any presumed intention not expressed in said
89 bonds, or by any ingenious or metaphysical construction thereof, extending the same to suit the grasping cupidity of the complainants, who, as already shown, would have lost their whole claim but for said injunction.

These respondents further show that said Wetmore held the said three bonds or certificates mentioned and descr'bed in the bill of said Spain, and in respect to which, damages are now claimed, simply as agent for the trustees of the Bank of the United States; and so far as the said Wetmore was named as obligee in said injunction bonds, he was only meant to be protected thereby to the extent of his individual interest or claim, if any he had, on said bonds; and so in respect to said Corcoran & Riggs, who were only intended to be indemnified thereby to the extent of their just claim or interest, if any they had, on said
90 bonds; but the interest or claim of said Hill therein was not meant to be protected or indemnified by means of said injunction bonds, as no process was prayed or ever had against him. Your respondents therefore deny the right of the representatives of said Hill to use the name of the executors of said Wetmore, or to maintain this bill in any respect by, under, or through, any supposed right or equities vested in said Wetmore as one of the obligees named in said bonds; and your respondents are informed and charge that the executors of said Wetmore have not authorized the use of their names may be stricken out of said bill as complainants.

Your respondents further show that the bill of said Spain having prayed for an injunction, and the writ of injunction having issued merely to "restrain the said Wetmore, his assignees, aiders, and abettors, from asking or receiving the sum of $81,722 08, being the one-tenth part of three bonds or certificates filed by him with the
91 Secretary of the Treasury," the representatives of the said Hill, and the said Corcoran and Riggs, not being assignees of Wetmore, cannot claim that any damages whatever was occasioned to them respectively by the operation of said writ of injunction, as no injunction was asked for or granted as against the representatives of said Hill, nor was any injunction, in fact, issued as against Corcoran and Riggs by reason of a clerical omission in the framing of said writ of injunction.

These respondents further show that at the time of the service of said writ of injunction, the Secretary of the Treasury was not prepared

or ready to pay said $81,772 08 or any part thereof; nor had the said Wetmore, as holder of said three bonds or certificates, complied with the conditions of the act of Congress, passed on the 28th of Feb., 1855, ch. 129, so as to be entitled to claim and receive payment of the pro rata due on said bonds, and your said injunction bonds are not
92 for any interest until said money was legally due and payable to said Wetmore, and when, but for said injunctions, the said representatives of said Hill would have been entitled to receive their money from said Wetmore; and your respondents require the complainants to prove the precise date when, but for the said injunction, the said Wetmore would have received the proceeds of said bonds, and have paid over to the representatives of said their share thereof.

These representatives further show that on or about the 17th day of January, 1859, by agreement between the trustees of the Bank of the United States and the said Spain, filed in said cause, and with the assent of the said Wetmore, and said Corcoran and Riggs, and by decree of the circuit court of the District of Columbia, passed on said agreement and consent of parties in said cause of said Spain against said Hamilton, Wetmore and others, the injunction so as aforesaid obtained
93 by said Spain, dissolved as to the pro rata on the sum of twelve thousand five hundred dollars, which pro rata amounted to $9,266 96, part of said sum of $81,772 08; and, in consideration thereof, the said trustees of the Bank of the United States, with the assent of all said parties, released the said Spain and his sureties on his said first injunction bond from all responsibility by reason of the amount as to which said injunction was dissolved as aforesaid, and agreed to abandon all further claim on said bond and on said suit.

And your respondents are advised and charge that such release and abandonment of all further claim on said injunction bond by a portion of the obligees therein named, with the assent of all said parties, and especially of said Wetmore, is a total discharge and release at law and in equity of said bond, and no claim can now be made thereon by the complainants or any of them.

And these respondents further say that, after the execution of the second injunction bond given by said Spain, Fred. A. Holford
94 and Henry L. Holford, administrators of James Holford, Gazaway B. Lamar, and Richard B. Cuyler, named therein, with the assent of the said Wetmore and said Corcoran and Riggs, and compromised with said Spain, and fully released and renounced all claim in and upon said injunction bonds, and each of them; and your respondents are advised and charge that by such release of some and assent of others of said obligees, the said bonds, and each of them, are utterly released and discharged.

These respondents are further advised and charge that, in the event of said injunction bonds, or either of them, being held liable to the complainants, an account ought to be stated, showing the net balance after paying the claims of Wetmore and Corcoran & Riggs, which would have been legally due and payable to the representatives of said Hill, but for the effect of said writ of injunction; and that if any interest or damage should be found chargeable as against said injunction
95 bonds, or either of them, that same may be credited with the amount paid by the administrators of Pierce Butler to the representatives of said Hill, as shown in said bill; and also with the amount paid by the James River and Kanawha Company to said Corcoran & Riggs, in exoneration of the liability, if any shall be found, chargeable in favor of said complainants as against said injunction bonds of said Spain, or any of them.

These respondents are further advised and charge that the bill filed in this case is manifestly multifarious, inasmuch as it claims relief against the sureties in two distinct injunction bonds, signed by different sureties, and constituting separate and distinct causes of action; and these respondents claim the same benefit of exception to said bill by reason of the multifariousness thereof, as if such exception had been taken by demurrer.

BRENT & PHILLIPS,
For Defendants.

96 DISTRICT OF COLUMBIA,
Washington County, to wit:

Before the subscriber, a justice of the peace in and for said county, personally appeared John F. May, this 16th day of September, 1868, and made oath on the Holy that the facts stated in the foregoing answer are true to the best of his knowledge and belief.

CHARLES WALTER,
Justice of the Peace.

STATE & CITY OF NEW YORK:

Before the subscriber, a commissioner of the United States duly qualified, personally appeared Henry , one of the above defendants, on this 24th day of September, 1868, and made oath on the Holy that the facts stated in the foregoing answer are true to the best of his knowledge and belief.

JAMES BETTS METCALF,
U. S. Commissioner South. Dist. of N. Y.

97 EXHIBIT A.

OFFICE OF TRUSTEES (4 AND 6 SEPTEMBER, '41)
OF BANK OF THE UNITED STATES,
October 16*th*, 1845.

DEAR SIR: The trustees have had under consideration the proposition which you verbally made to them on Friday last, the whole board being in session for that purpose.

The conclusion to which we have come is, to avail ourselves of the offer which you verbally made to us of your services to prosecute, in the manner you proposed, our claim (together with those of a like character which you now represent for Messrs. Holford, of London, and your own, individually) on the Texan government, represented by the bonds and securities of that government, of which you have a list, and in which, as you know, we have now only a contingent and resulting interest, dependent upon the payment by us of the amount for which they are now held by Mr. Wetmore in pledge. If, there-
98 fore, you will devote your best efforts, time, and means to the great object of securing the recognition and payment of said claims above mentioned, and your efforts shall be successful, then we agree, on our part, to allow you a commission for said service so rendered of ten per centum (which shall cover all charges and expenses attendant upon the same) on whatever sum or amount of our said claim, through your instrumentality, shall be recognized and paid over to us, over and above the amount for which the said bonds are pledged as aforesaid. The limitation of time during which this agreement, on our part, can with certainty be continued is only to the twentieth of

March next ensuing; but we are wiling, with the concurrence of Mr. Wetmore, or, in case we should then or sooner obtain the entire control of these bonds and securities now in his hands, to extend the said time to two years from this date, beyond which period we are not now inclined to be bound by this agreement.

We shall be pleased to hear from you from time to time, as you
99 may progress in your operations.

I am, very respectfully, your ob't serv't,

T. S. TAYLOR,
Secretary.

Gen'l JAMES HAMILTON,
Washington, D. C.

A true copy. Test:

JOHN A. SMITH, *Clerk.*

EXHIBIT B.

OFFICE OF TRUSTEES, (4 AND 6 SEPT. '41,)
BANK OF THE UNITED STATES,
Sept 16, 1850.

WILLIAM S. WETMORE, ESQ., *New York:*

DEAR SIR: On the 16th October, 1845, the trustees of the Bank of the United States, under its several assignments of the 4 and 6 of September, 1841, entered into a written agreement with Gen'l James Hamilton, by which was stipulated that he should give his best services to secure the payment, at the earliest period possible, of the bonds or obligations issued by the Republic of Texas, and belonging to them
100 under assignment from the bank for the repayment of certain advances made by you to it, as admitted in the answer of the said trustees to the bill of complaint, filed by you in the supreme court of New York, and there still pending; and that on the final adjustment and payment of said bonds and obligations to said trustees, (subject, however, to your claim for an account of your advances above-mentioned,) they were to allow him a commission of ten per cent. upon the amount which, through his instrumentality, might be recovered and paid over of the same to said trustees, in full compensation and satisfaction for his services in the matter; and as these services seem to have been rendered by General Hamilton so far as in his power, without, however, realizing any money from said bonds, and as the Government of the United States has, by an act of Congress recently passed for the settlement of the boundaries of Texas, assumed, on the conditions therein expressed, to pay at its Treasury in Washington, certain of the bonds and certificates of indebtedness of Texas not exceeding five mil-
101 lions of dollars by the issue of stock bearing an interest of five per cent. per annum, and among which last-mentioned bonds the said trustees have been informed by General Hamilton, are included the said first-mentioned bonds held by them. Under this belief the trustees, at the particular request of General Hamilton, have instructed me to say to you, if they should not have previously redeemed the bonds, that upon the final adjustment and payment of said bonds first abovementioned, either by the Treasury of the United States in the manner provided for in said act of Congress, or otherwise, to the satisfaction of said trustees, pursuant to their said agreement with said General Hamilton, you will be pleased to hold, subject to the order of General James Hamilton, one-tenth of any sum over and above your claim against the

said bonds, viz, $55,493 24, with interest from the 9th day of December, 1842, which may be received from the State of Texas or from
102 the Government of the United States on the following bonds of the Republic of Texas, viz., 378 bonds, for £250 each—£94,500; for £10,126 13*s.* 4*d.*; all dated 1st July, 1839, and bearing interest at the rate of ten per cent, per annum, for which bonds the following certificates were issued by the State of Texas, viz, No. 1031, dated Nov. 9, 1849, for $457,380, and interest $457,380; No. 1038, dated Nov. 9, 1849, for 48,913, and interest $48,913; No. 1231, dated Nov. 12, 1849, for $100, and interest $100. Principal and interest amounting, on the 1st July, 1849, to one million and twelve thousand seven hundred and eighty-six dollars.

I am, very respectfully, your ob'd't servant,

T. S. TAYLOR,
Secretary.

In conformity with the above order, I will, when received by me, pay over to James Hamilton, or to his order, the tenth of the money or stock that may be received, either at Austin, Texas, or at Washington, D. C., on the above certificates, subject, however, to the conditions of the above order and to a lien I hold by assignment for $2,500, which sum
103 I loaned General Hamilton, with interest from August last.

(Signed) W. S. WETMORE.

(Copy.)

WASHINGTON, 21 *Sept.*, 1850.

Pay to the order of Messrs. Corcoran & Riggs, of Washington City, the sum of thirty thousand dollars, after your claims shall have been satisfied out of the first moneys received.

(Signed) J. HAMILTON.

$30,000.]

A true copy. Test:

JNO. A. SMITH, *Clerk.*

Accepted Sept. 24, 1850.

W. S. WETMORE.

104 *Answer of defendant Elisha Riggs to original bill. Filed Oct.* 22, 1868.

In the supreme court of the District of Columbia.

S. J. WILLIAMS ET AL. *vs.* J. F. MAY ET AL. } In equity. No. 1274.

The separate answer of Elisha Riggs to the bill of complaint of S. J. Williams & others.

This defendant, saving and reserving to himself all manner of exception to the errors and imperfections of the said bill, nevertheless, for answer to so much thereof as he is advised is material for him to answer unto, says:

That he has no personal knowledge or recollection of the details of the several proceedings in equity set forth in the bill of complaint, but has no reason to doubt that they are correctly set forth in the said bill.

He knows, and therefore admits, that he was made defendant to two bills filed respectively by the James River & Kanawha Company,
105 and by Pierce Butler, to restrain William S. Wetmore, this defendant and others from receiving certain certificates of the Texas debt, assumed by the United States, and that the usual injunction bonds were given by the several complainants and the writs of injunction were issued, directed to this defendant and others restraining them from receiving any moneys accruing upon the said certificates. This defendant believes and admits that the bonds so given and writs issued and the orders of the court in relation thereto are correctly set forth in the said bill of complaint.

This defendant admits that he has received (one-fourth) a part of the sum of $5,000, paid by the James River & Kanawha Company to W. W. Corcoran, the said (fourth) part being the proportionate interest of this defendant in the amount assigned by James Hamilton to the said W. W. Corcoran & this defendant (and which amount so assigned
106 the said Wetmore had agreed to pay) on account of the damages and costs by him sustained by reason of the writ of injunction sued out by the said company, as stated in the said bill of complaint.

As to the other matters and things set forth in the said bill of complaint this defendant has now no distinct personal recollection or knowledge, and while he has no doubt that they are correctly stated in the bill of complaint he cannot admit them to be true.

And this defendant further answering says that in consequence and by reason of the writ of injunction set forth in the bill of complaint, he and his copartner W. W. Corcoran were restrained and prevented from receiving the sum of thirty thousand dollars, which sum the Treasury Department of the United States was ready and willing to pay to William S. Wetmore on account of the said Texas certificates, and the said Wetmore was ready and willing to pay to this defendant's firm,
107 but which the said Wetmore and this defendants were, by the said writs of injunction, prohibited to receive, and by reason of said prohibition these defendants' firm were deprived of the use of the said sum from the 31st day of May, 1856, till the 16th day of April, 1861, when, the injunction having been dissolved they received the said sum, whereby these defendants sustained damage to the amount of the interest of said sum for the period aforesaid and their costs in said suit expended, which damages largely exceed the amount of money received, as hereinbefore stated, from the James River and Kanawha Company.

E. RIGGS.

STATE OF NEW YORK, *City and County of:*

Before the undersigned, a notary public in and for said county, personally appeared Elisha Riggs and made oath that the matters and things stated in the foregoing answer are true, to the best of his
108 knowledge and belief. In witness whereof I have hereunto set my hand and affixed my official seal this nineteenth day of October in the year one thousand eight hundred and sixty-eight.

[SEAL.] W'M HENRY ANTHON,
Notary Public, City and County of New York.

Answer of Hugh Caperton to original bill.—Filed Oct. 30, 1868.

WILLIAMS ET AL.
vs.
MAY ET AL. } 1274. Equity doc. 9.

The seperate answer of Hugh Caperton to said bill of complaint.

This respondent, saving all exceptions to said bill, for answer
109 nevertheless unto so much thereof as is material, saith that it is true the bill of the said Ja's River & Kanawha Company was filed in the manner stated; that this respondent, together with Robert Ould and Thomas Ellis, signed the injunction bond, and that said injunction was dissolved as alleged in complainant's bill.

This respondent further showeth that William W. Corcoran, one of the obligees in said injunction bond, some time in the year 1867, sued him and the said Robert Ould for the penalty in said bond, and obtained on the common-law side of your honorable court a judgment against this respondent for the sum of five thousand ($5,000) dollars and costs; that said judgment was entered satisfied by the attorney of said William W. Corcoran, as by reference to the law docket of said court, No. 3408, will fully appear; and that said suit against Robert Ould was by said attorney also dismissed.

110 This respondent further showeth that said injunction-bond having been merged in said judg't, and said judgment having been satisfied, he is absolved from all further liability, legal or equitable, for or on account of said bond, and prays that said bill, as to him, may be dismissed, with costs. And, as in duty bound, he will ever pray, &c.

R. J. BRENT,
For Defendant Hugh Caperton.

Subscribed and sworn to before me, Oct. 30, 1868.
R. J. MEIGS, *Clerk.*

Replication.—Filed Nov. 2, 1868.

The replication of Stephen J. Williams, William J. Hopkins, A. P. Man, John M. Bass, & J. Dick Hill to the answers of John Frederick May, Henry Oelrichs, and William W. Corcoran, Elisha Riggs, & Hugh
111 Caperton.

These repliants, saving and reserving to themselves all and all manner of exceptions to the manifold insufficiencey of said answers, for replication thereunto saith that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied to, confessed, and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and prays as in and by his said bill he hath already prayed.

JOHN N. OLIVER,
Att'y for Compl'ts.

112 *Interrogatories to Hemphill Jones on behalf of complainant.—Filed Nov. 3, 1868.*

Interrogatories to be propounded to Hemphill Jones, of the city of Washington, a witness to be examined in behalf of the compl'ts.

Interrogatory 1st. Are you now an officer in the Treasury Department, and how long have you been so employed?

Interrogatory 2d. Were you concerned as such officer in settling the claim of William S. Wetmore as a creditor of Texas under the act of Congress 28 February, 1855?

Interrogatory 3d. If you answer the foregoing in the affirmative, state at what date the same was filed; what was the amount and number of the certificates evidencing said indebtedness; whether the same
113 was acknowledged at the Department to have been duly filed under the act; whether the same was reported for payment, and when so reported; whether $\frac{9}{10}$ of the pro rata allowed was paid to Wetmore, or to others by his direction, and at what time said payment was made.

Interrogatory 4th. If you state that $\frac{9}{10}$ was paid, and the date of the same, state why the remaining $\frac{1}{10}$ was not paid at the same time.

Interrogatory 5th. If the $\frac{1}{10}$ was not paid at same time, state when the same was subsequently paid; how much to Wetmore, how much to Corcoran & Riggs, and how much to J. Dick Hill, or P. Phillips, esq., as his attorney; what was the aggregate amount of the $\frac{1}{10}$ thus distributed between these parties.

Interrogatory 6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties
114 at issue in the cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause?

JOHN N. OLIVER,
Att'y for Compl'ts.

Order appointing B. G. Lovejoy special com'r.—Filed Nov. 10, 1868.

On motion of Jno. N. Oliver, esq., sol'r for compl'ts, it is ordered that B. G. Lovejoy be appointed commissioner to take the answers of Hemphill Jones, of Washington City, a witness to be examined on behalf of complainants; the said interrogatories being now on file, and of the same on the sol'ar of deft's.

GEO. P. FISHER,
Jus. S. C. D. C.

115 *Complainant's testimony.—Filed Ja'y 16, 1869.*

In the supreme court of the District of Columbia.

J. DICK HILL ET AL.
vs.
OELRICHS ET AL. } Eq. No. 1274.

Deposition of WILLIAM HEMPHILL JONES, a witness produced on the part of the complainants, who, being first duly sworn, deposed and answered to the annexed interrogatories as follows:

My name is William Hemphill Jones.

Ans. 1st interrogatory. I am, and have been for the last seventeen years.

Ans. 2 interrogatory. I was.

Ans. 3d interrogatory. On the 4th day of April, 1856, William S. Wetmore and others filed three certificates of Texas indebted-
116 ness, namely, No. 1031, for $457,380 00; No. 1038, for $48,913 00, and No. 1231, for $100 00, amounting in all to $506,393. And on the same day the Department acknowledged that the said certificates were duly filed under the act. On the 3d day of June, 1856, a pro rata allowance of 76,895 upon the gross amount was reported for payment. $\frac{9}{10}$ of this pro rata amount was paid Wetmore's associates, but because an injunction was filed by Albertus C. Spain, the remaining one-tenth $\frac{1}{10}$ was not paid to Wetmore at that time.

Ans. to 5th interrogatory. On the 3d day of March, 1859, out of this tenth so as aforesaid remaining unpaid the sum of $12,051 48, was by consent of said Wetmore, paid to S. Jaudon, J. A. Bayard, C. Fallon, and William B. Reed. And on the 20th day of March, 1861, the United States circuit court of the District of Columbia, having
117 dissolved the injunction, the remainder of the $\frac{1}{10}$ aforesaid being $69,720 60 was paid to William W. Corcoran, attorney-in-fact of William S. Wetmore, and in drafts of the following amounts, which were intended to represent the several claims upon said fund, namely, to William S. Wetmore $4,333 66; to William W. Corcoran $30,000 00; and to P. Phillips, esq., attorney of J. Dick Hill, three drafts amounting in all to 35,386 00.

I know of nothing else material to the issue in this cause.

W'M HEMPHILL JONES.

Sworn and subscribed to before me this 15th day of January, A. D. 1869.

BEN. G. LOVEJOY,
Special Commissioner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that on this 15th day of January, 1869, I,
118 Ben. G. Lovejoy, a commissioner appointed by the annexed order of the supreme court of said District to take the answers of W'm Hemphill Jones to the interrogatories filed in the cause of J. Dick Hill et al. vs. Mary Oelrichs et al., No. 1274 chancery, in pursuance of said order did cause the said W'm Hemphill Jones to appear before me on this 15th day of January, in said District, he having by me been first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matters and things at issue in said cause, and having the annexed interrogatories by me read to him did answer the same in manner foregoing.

BEN. G. LOVEJOY,
Special Commissioner.

119 *Alias subpœna to answer cross-bill.—Filed Jan'y* 20, 1869.

W. W. CORCORAN ET AL.
vs.
J. F. MAY ET AL. } No. 1274. Eq. doc. 9.

The President of the United States to John Frederick May, defendant:

You are hereby commanded to appear in this court at its first special

term, occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

Return of marshal upon s'p'a to ans. cross-bill.

Spa. to ans. cross-bill. Return of.

Summoned Jan'y 22, 1869.

D. S. GOODING,
Marshal.

120 *Stipulation of counsel touching answer of defendants May and Oelrichs.—Filed Jan'y 26, 1869.*

WILLIAMS ET AL. *vs.* MAY ET AL. } No. 1274.

It is stipulated and agreed that the answer of the defendants, J. F. May and Henry Oelrichs, to the bill of complaint, is to be taken as the answer of the said defendants to the cross-bill, so far as applicable thereto.

R. J. BRENT,
For Oelrichs & May.
JNO. D. MCPHERSON,
Sol'r for Corcoran & Riggs.

Stipulation of counsel for answer to cross-bill.—Filed Feb'y 10, 1869.

WILLIAMS ET AL. *vs.* MAY ET AL. } No. 1274.

It is agreed the allegations of the complainants in the original bill of complaint shall be taken as their answer to the cross-bill filed in this cause, so far as they are applicable.

JNO. M. OLIVER,
For Compl't.
JNO. D. MCPHERSON,
For Corcoran & Riggs.

121 *Agreed statement of facts.—Filed May 4th, 1869.*

1. That Williams, Hopkins, and Mann, are the legal representatives of W. S. Wetmore, and Bass, the ex'r of Hill, and J. D. Hill the only child and heir of H. R. W. Hill.

2. That the bill of Pierce Butler was agreed to be taken as an answer to Spain's bill, and the answer of all the defendants in the latter case were taken as cross-bills.

3. That the bill of the James River & Kanawha Company was dismissed on 11 May, 1861, and the injunction dissolved as on the 9 May, 1859.

4. That the answer of Bass, as ex'or of H. R. W. Hill, to the bill of the

James River & K. Company, filed on , was, by agreement, considered filed in Spain's case on 9 Sept., 1860.

5. That the statement of P. Phillips, filed in this cause, to the effect that $1,500 of his fee charged to the executor of Hill was charged by reason of the injunction proceedings, should be received in evidence as if regularly taken by depositions.

6. That the answer of the trustees of the bank, in Spain's case, is to be received in evidence as if the evidence had been regularly taken by deposition.

7. That the exhibits to the answer in this case, with Wetmore's acceptance thereon, testify the true agreement with Hamilton.

122 *Stipulation of* 17 *June*, 1869.—*Filed June* 17, 1869.

WILLIAMS ET AL. *vs.* MAY ET AL. } 1274. Eq. doc. 9.

It is agreed between the parties to this suit—

1. That Wetmore's answer to Spain's bill may be received as evidence taken by deposition.

2. That all the statements contained in the agreement and supplement thereto, including Wetmore's affidavit, on which Spain's bill was tried, may be received in like manner.

3. That the sale of Hamilton to Hill, on 27 May, 1853, found in the record of the Sup. C't in the case of Spain vs. Brent et al., at p. 90, as also the proceedings filed Feb'y, 1853, by James Robb & Co. vs. James Hamilton, and found in same record, p. 101, be admitted as duly proved. The complainants and defendants reserve their right to object to all or any part of the foregoing on the grounds of competency or relevancy.

123 4. It is admitted by defendants that Charles McAlister, Josiah Randal, Samuel Jaudon, James Bayard, Christopher Fallon, William B. Reed, Henry S. Holford, Frederick S. Holford, adm'r James Holford, Gassaway B. Lamar, Richard P. Cuyler, who are named as obligees in the several injunction bonds filed as exhibits to complainant's bill, have now no interest in said bonds, by reason of their respective releases.

5. It is further admitted that the exhibits to complainant's bill may be received as proved, reserving to the defendants the right to object to the competency or relevancy of all or any part thereof.

R. J. BRENT,
For Def't H. Oelrichs, J. F. May, & H. Caperton.
J. D. McPHERSON, *For C. & R.*
P. PHILLIPS, *Sol'r Compl't.*

124 *Deposition of W. Hemphill Jones on behalf of defendants.—Filed Dec.* 17, 1869.

WILLIAMS ET AL. *v.* OELRICHS & OTHERS. } No. 1274. Eq. doc. 9.

Interrogatories to W. Hemphill Jones on the part of defendants.

Interrogatories.

1. State what you know of the certificates of the State of Texas, numbered 1031, 1038, & 1231, and now on file in your office, being paid ;

and, if you say they were paid, state when, and to whom, and under what act of Congress the same were paid.

2. State what you know of releases being filed in the Treasury Department of the United States by Corcoran & Riggs, and the representatives of H. R. W. Hill and Gen. James Hamilton, or any of them, under the requirements of the letter of the Secretary of the Treasury, dated April 21, 1856, to William S. Wetmore.

125 3. If, in answer to the last preceding enquiry, you state that any releases were filed, state the date of such filing, and by whom, and especially state if any release was ever by the representatives of H. R. W. Hill, and when, and annex a copy thereof as part of your answer.

4. If, as you state in your examination heretofore taken in this cause, you paid to W. W. Corcoran, as attorney *as attorney* for Wetmore, the amounts for the persons therein stated by you, please say whether or not at the time of such payments you had in your mind the conditions of said letter of the Secretary, dated 21 April, 1856.

5th. State what you know of the conditions stated in said letter of 21st April, 1869, being in force and uncomplied with, in whole or in part, on the 31st May, 1856, and if said conditions were subsequently to the date of said letter, waived or dispensed with by the Secretary of the Treasury, state when and how they were waived or dispensed with by him.

6. State what, in view of said letter of 21st April, 1856, you or
126 the officers of the Treasury Department would have required, if you or they had been called on for payment of the amounts referred to in the 4th interrogatory above, on the 31st May, 1856, or at any time during that or the next year, and especially state why the fulfilment of the conditions stated in said letter of 21 April, 1856, were not required when payments of said several amounts were made by you, as stated by you in your previous examinations in this cause.

7. State any other matter or thing known to you, and which is material at the hearing of this cause.

R. J. BRENT, *For Defendants.*

127 In the supreme court of the District of Columbia.

WILLIAMS ET AL.
vs.
OELRICHS AND OTHERS. } No. 1274. Eq. doc. 9.

Answers to interrogatories.

To the interrogatories on the part of the defendants, W'm Hemphill Jones answereth as follows:

To the first interrogatory, I reply that the certificates of Texas debt, numbered respectively 1031, 1038, and 1231, were paid at the Treasury Department per Report No. 168, dated June 3, 1856, per act (W. H. J.) of Congress approved month of September, 1850, and explanatory act approved February 28, 1855, as follows, viz:

To C. MacAlester, J. Randall, C. Fallon, and W'm B. Reed, on June 3, 1856	$652,948 80
And to same parties per Comptroller's certificate, dated June 19, 1856	83,000

Per certificate, dated Feb. 19, 1859, there was paid to S.

	Jaudon, J. A. Bayard, C. Fallon, and W'm B. Reed...	9,266 96
	Per certificate, dated March 3, 1859, there was paid to the same parties.....	2,784 52
128	Per certificate, dated March 20, 1861, there was paid to W'm W. Corcoran, attorney of W'm S. Wetmore.....	69,720 60
		$817,720 88

(See copy of statements marked A herewith.)

In answer to 2nd interrogatory, I reply that it was the practice of the Department to require releases from all parties prior to payment to them of the sum or sums of money they were entitled to receive under the Texas claims. I do not personally know that such releases were filed by Corcoran & Riggs, the representatives of H. R. W. Hill, and Gen. James Hamilton.

In answer to the 3rd interrogatory, I refer to my preceding answer.

In answer to the 4th interrogatory, I reply that Mr. Corcoran was paid, but I cannot now say what was in the mind of the accounting officers when they awarded that such payment should be made.

In answer to the 5th interrogatory, I would state that I do not
129 know whether said conditions were complied with, or whether they were waived or dispensed with.

In answer to the 6th interrogatory, I reply that I know of no instance where the requiring of releases was dispensed with.

I know nothing else pertinent to the cause under trial referred to in these answers.

W. HEMPHILL JONES.

130 *Cross-interrogatories by complainant to W. Hemphill Jones.—Filed Dec.* 17, 1869.

WILLIAMS ET AL. }
vs.
OELRICH ET AL. }

The complainants in the above bill deny the right of the defendants to examine said Hemphill Jones on the subjects contained in the direct interrogatories herewith. Reserving their exception thereto, as incompetent and irrelevant, they propound the following cross-interrogatories:

Cross-interrogatory first. W*ere* not the payment of the certificates referred to in the first direct interrogatory made under the acts of Congress of 9th September, 1850, and the explanatory act of 28th February, 1855?

Cross-interrogatory second. Did not the Secretary of the Treasury give public notice by advertisement as required by the said acts? When
131 was said notice published, and what was the release required and by whom, as contained in said printed notice?

Cross-interrogatory third. Did Spain file copy of writ of injunction restraining the payment of said certificates on 2d June, 1856, and did Secretary direct the Comptroller on the subsequent day to respect the same?

Cross-interrogatory fourth. Was there paid to the trustees of the Bank of the United States on 29 April, 1856, the sum of $12,051 48,

being part of the $\frac{1}{10}$ due on said certificates? Did they release and receipt for the same? If yea, annex copy of said receipt and release.

Cross-interrogatory fifth. If you say you cannot find on the file any release from the representatives of Hill or of Hamilton, as were suggested to be necessary in the letter of the Secretary of the Treasury, referred to in the direct interrogatories, state whether any action was taken in the Department which would lead to the belief that such require-

132 ments were dispensed with. Refer to the settlement of the claim made by the Auditor and Comptroller on 31 May, 1856, No. 168, and annex copy of the same to your answer.

Cross-interrogatory sixth. When was the payment of $\frac{9}{10}$ due on the certificates made? Was it not made on this settlement? And would not the $\frac{1}{10}$ had been paid to said Wetmore at the same time on the same settlement, had it not been for the injunction aforesaid?

Cross-interrogatory seventh. What was the amount of the remainder of the $\frac{1}{10}$ part? When and to whom, and did this payment also take place under the settlement made by the Auditor and Comptroller of 31 May, 1856, heretofore referred to?

Cross-interrogatory eighth. If you know anything else that would benefit the complainants, state the same as if particularly interrogated.

P. PHILLIPS,
Sol'r for Compl'ts.

133 It is agreed that these interrogatories and cross-interrogatories may be answered without oath or commission.

P. PHILLIPS,
Sol'r Compl'ts.

Filed Dec. 31, 1869.

134 *Answers of W. Hemphill Jones to cross-interrogatories.*

WILLIAMS ET AL
vs.
OELRICH ET AL.

To the cross-interrogatories filed in this case, I answer as follows:

First. The payments of the certificates referred to in the first direct interrogatory were under the acts of Congress of September 9, 1850, and February 28, 1855.

To cross-interrogatory 2nd, I answer: The Secretary of the Treasury did give public notice as required by the law. (Said advertisement is attached hereto, marked B.)

To cross-interrogatory 3rd, I answer: Yes.

To cross-interrogatory 4th, I answer: Yes; their receipt is upon the draft issued for payment; their releases are attached hereto by copies marked C and D.

135 To cross-interrogatory 5th, I answer: That I do not know whether such releases were filed or not, nor do I know that their filing was dispensed with. I know the payment was made, and have no reason to think that in this case was there any departure from the established rule for releases. A copy of Comptroller's report No. 168, is filed with my answers to direct interrogatories.

To cross-interrogatory sixth, I answer: That payment was made upon settlement No. 168, and the $\frac{1}{10}$ referred to would have been paid to said Wetmore at the time the other payments were made but for the injunction referred to in the 3rd cross-interrogatory.

To cross-interrogatory seventh, I answer: That on the 20th March, 1861, upon the dissolving of the injunction in the case of A. C. Spain vs. Hamilton's adm'r, Wetmore, et als., there was paid the sum of $69,720 60 to W'm W. Corcoran—this was paid under settlement of Auditor and Comptroller, dated June 3rd 1856, above referred to, and copy of which is attached to my answers to direct interrogatories. I know nothing more, material to the interest of complainants.

W'M HEMPHILL JONES.

136 *Motion by compl't to reject evidence.—Filed Dec.* 31, 1869.

The complainants, by their solicitors, having heretofore excepted to the relevancy and competency of all the evidence offered by the defendant to prove that the Treasury Department was *not* about to pay and would have paid to Wetmore the amount in controversy but for the injunction filed by Spain.

Having also objected to all evidence raising the question whether James Hamilton was not entitled under his agreement with the bank to the expressed in said agreement, and insisting upon these as well as all other objections heretofore specifically made—and moves the court to reject all such evidence.

P. PHILLIPS,
Sol. for Compl't.

Stipulation of Dec. 31, 1869.—*Filed Dec.* 31, 1869.

1. The report of Sec'y of Treas'y and opinion of Att'y Gen'l on the act of 1850, may be offered in evidence.
2. That in the papers on file in the Treas'y Dep'tm't relating to Wetmore's claim there is filed a release, before payment, by Wetmore and Corcoran & Riggs—but no release is found on said file by the representatives of Hill or by James Hamilton.
3. The preliminary and final decrees, together with Auditor's report and exceptions thereto filed in Spain's case, to be evidence in this case.

137 *Letters Sec'y of the Treasury—certified.—Filed Dec'r* 31, 1869.

Agreement endorsed on letters.

It is agreed that the within copies be read to have the effect as if the originals were duly proved and their delivery to the parties to whom the same were respectively addressed was also proved, and subject to the same exceptions; and further, that the notice referred to in these copies is the printed one annexed to Mr. Jones' deposition.

R. J. BRENT, *for Oelrichs & May.*
P. PHILLIPS, *Sol'r Compl't.*

138 [A 1, p. 337. Copy. "A. L."]

TREASURY DEPARTMENT, 22*d March*, 1851.

SIR: The act of Congress of 9th September, 1850, authorizing the issue of ten millions of 5 per cent. stock to Texas, provides that five millions of it shall be retained until certain creditors of the State sign a full release to the United States of their claims, and that the form of which release shall be prepared by the Secretary of the Treasury and approved by the President.

In pursuance of this provision I have the honor herewith to submit for your consideration the form of a release prepared under direction of the Hon. Secretary of the Treasury by the solicitor and respectfully request your sanction to it, provided it meets your approbation.

With the highest respect, your ob't serv't,

W'M L. HODGE,
Acting Secretary of the Treasury.

THE PRESIDENT.

139 [K 24, p. 23. Copy. A. L.]

TREASURY DEPARTMENT, *April* 15, 1856.

GENTLEMEN: Your letter dated the 4th inst. was received to-day with certificates of Texas debt, No. 1031 for $457,380: No. 1038 for $48,913, and 1231 for $100—*is* issued in favor of W. S. Wetmore. He has assigned $\frac{9}{10}$ths of their respective amounts to R. H. Bayard, James S. Newbold, Herman Cope, and Thomas F. Taylor, who have assigned that portion of Charles Macalester, Josiah Randall, Christopher Fallon, and William B. Reed, but the last-named assignment is not verified by acknowledgment before a notary public or comm'r of Texas, as has been made and is understood to have been required by the laws of Texas.

The affidavit of ownership states that $\frac{9}{10}$ths of the amount due on these certificates are held and owned by C. Macalister, J. Randolph, C. Fallon, & W. B. Reed; that as to the remaining tenth it is held by W. S. Wetmore in pledge to collect and distribute according to the
140 rights of the parties entitled, and that residuary interest in said tenth belongs to S. Jaudon, J. A. Bayard, C. Fallon, & W. B. Reed.

These certificates of Texas debt appear to be held for collection, or in pledge; the name of the party for whom they are so held is required to be stated, that releases may be executed by such party.

In this case it does not appear for whom this tenth is held in the first instance. Difficulty may arise in settling this tenth, from this Department, and it seems proper to apprise you of it, that it may be obviated in any manner you may be advised.

The papers appear to be in proper form except as to the particulars herein pointed out, and have been placed on file.

Very respectfully your ob'd't se'v't,

(Signed) JAMES GUTHRIE,
Secretary of the Treasury.

W. S. Wetmore, C. Macalister, J. Randall, C. Fallon, W. B. Reed, S. Johnson, & J. A. Bayard, esquires, Philadelphia.

141 [K. 24, p. 66. Copy. A. L.]

TREASURY DEPARTMENT, *April* 21, 1856.

SIR: Your letter of the 19th inst. is received, with the affidavit stating the various interests in the one-tenth of the certificates of Texas debt, retained in your own name by the terms of the assignments. This tenth comes within the postscript of my notice; you hold it in pledge and for collection. You have stated the parties and their respective interests, as recognized by you, who are yourself, Messrs. Corcoran & Riggs, the representatives of H. R. W. Hill, late of New Orleans, and Messrs. Jaudon, Bayard, Fallon, and Reed, in various sums.

Now, under the requirement that the parties claiming beneficial or reversionary interests shall make releases before settlement in favor of the party holding in their behalf, it seems that Messrs. Corcoran & Riggs & the representatives of Mr. Hill, as well as Gen'l Hamilton, should file releases.

There is no doubt but you hold the legal title to the tenth, as your state; so does every party who hold evidences of Texas debt in
142 pledge for advances, or for collection in behalf of another.

But it has been decided by this Department that holders of equitable rights as well as legal titles should make the releases required by the 3rd section.

Very respectfully,
(Signed) JAMES GUTHRIE,
Secretary of the Treasury.

WILLIAM S. WETMORE, Esq.,
New York.

143 *Spain's bill.—Filed Dec.* 31, 1869.

In the circuit court of the United States for the District of Columbia.

ALBERTUS C. SPAIN
vs.
JAMES HAMILTON & OTHERS. } 1171. Rules 5.

To the honorable the judges of the circuit court of the District of Columbia for Washington County, sitting in equity.

The bill of complaint of Albertus C. Spain (committee of Mary M. McRa, a lunatic,) respectfully sheweth that a certain James Hamilton, of the State of Texas, a now resident of this District, although now temporarily being in the jurisdiction of this honorable court, and who is prayed to be made a defendant hereto, did heretofore, to wit, on the twelfth day of February, A. D. eighteen hundred and fifty, execute and deliver unto your orator, as committee of said Mary M. McRa, an instrument of writing, duly signed and sealed by said Hamilton, purporting to transfer, assign, and convey unto your orator, among other things, and for the consideration therein mentioned, all his claims for commisssions for services rendered to all and every person or
144 persons in the prosecution of his and their claims on the government of Texas, as well as all his claims of whatever nature on the said government of Texas, whether by bond or open account, subject to any prior assignment which he, the said Hamilton, had made, as will more fully and at large appear by reference to a copy of the original assignment herewith filed, marked Complainant's Exhibit A, and prayed to be taken as part of this bill of complaint, your orator tendering himself ready to produce and prove the original when necessary in this cause.

Your orator further sheweth that the amount of the debt recited in said assignment and thereby secured, was, at the date thereof, largely exceeding the sum of fifty thousand dollars, and will amount to the sum of $82,008 29, including principal and legal interest thereon, according to the laws of South Carolina, at the rate of 7 per cent. per annum, computed to the first of June, A. D. 1856, as appears by the annexed account, herewith filed, marked "Complainant's Exh. B," and prayed to be taken as part of this bill; that the said indebtedness arose as

follows: The said Hamilton acted, many years ago, as legal
145 trustee for the benefit of said Mary M. McRa, who was then a married woman, residing in the State of South Carolina separate and apart from her husband, and who was, in her own separate right, the owner of a large and valuable real and personal estate in said State; that, during the time of his said trusteeship or agency for said Mrs. McRa, the said Hamilton received for her use and benefit large sums of money, as the proceeds of her property, and otherwise accruing to her, which monies he invested in stock of the Bank of Charleston, which stock he obtained in his own name as "trustee," without stating for whom he held the same as trustee; and from time to time he continued to pay over the dividends on said stock to said Mary M. McRa until the spring of eighteen hundred and forty, when a pretended settlement took place between said Hamilton and the son of said Mrs. McRa, and it was thereupon agreed by said Hamilton that the dividends on said stock should thereafter be paid to the firm of John Kirkpatrick & Co., the amount of dividends thereon, from the first day of January, 1842, to the first day of January, 1846, and which amount the said Hamilton received and applied wrongfully to his own use; and afterwards,
146 while the said Mrs. McRa was a lunatic and insane, and while proceedings were pending in the proper courts of South Carolina with a view to the appointment of a committee to take charge of and preserve the estate of said Mrs. McRa, the said Hamilton, without any legal authority whatever, but wrongfully, sold all of said stock so standing in his name as trustee, and fraudulently converted and applied the proceeds thereof, amounting to a large sum of money, to his own use; and your orator herewith files, as part of this bill, a copy, marked Exhibit C, of an original affidavit made several years since in a cause on the common-law side of your honorable court, where your orator was plaintiff and the said Hamilton was defendant, which said suit was dismissed by your orator.

Your orator further sheweth that no portion of the negroes or property mentioned and described in the aforesaid assignment as having been purchased with money of said Mrs. McRa has ever been delivered to your orator according to the true intent and meaning of said instrument of assignment and the undertaking of said Hamilton, but the same have been hitherto withheld from your orator's possession
147 and claim, although he has made every necessary and proper effort to obtain the possession of the same; and your orator further sheweth that, to this day, no part of the said debt or the interest thereon, has been paid to him or any one else, to his knowledge, for the use and benefit of said Mary M. McRa, who is yet alive and hopelessly insane; that the husband of said Mrs. McRa, as well as her son, died many years ago, and the only descendants or distributees of her estate, if she were now to die, would be two orphan minor children of the said deceased son, who now reside with their mother in the State of Maryland.

Your orator further sheweth that, afterwards, with a view to make the said assignment effectual, and to fasten notice thereof upon the government of Texas, on the 8th day of June, 1851, he caused a certified copy of said assignment to be deposited in the post office at Galveston, Texas, which said copy was directed to James H. Raymond, the treasurer of Texas, at Austin, the then capital of said State of Texas, as appears by a copy of the certificate of P. Hunt, notary public, endorsed on the original of the aforesaid "Complainant's Exhibit A," and prayed
148 to be taken as part of this bill of complaint. And your orator

believes and charges that said copy of said assignment was duly received by the treasurer of Texas some time in the month of June, A. D. 1851, and duly registered or filed among the public archives in his office, for the inspection of all whom it might concern.

Your orator further sheweth said Hamilton is insolvent, and unable to pay his debts and liabilities, and that a certain W'm S. Wetmore, a citizen of the State of New York, who is prayed to be made a defendant hereto, has filed with the Secretary of the Treasury three certain bonds or certificates of indebtedness by the State of Texas to the said Wetmore, amounting to a large sum of money, to wit, as your orator believes and charges, in the aggregate to $506,393, or upwards, with interest thereon, and the said Secretary of the Treasury is about to pay to said Wetmore, or his assigns, on account of said bonds, and in pursuance of the act of Congress, passed February 28, 1855, ch. 129, entitled "An act to provide for the payment of such creditors of the late Republic of Texas as are comprehended in the act of Congress of September 9, 1850,"
a large sum of money, amounting to at least $817,720$\frac{80}{100}$; but
149 your orator further sheweth that said Wetmore holds, or claims to hold, a large portion of the proceeds of said bonds or certificates, and which portion your orator charges to be one-tenth part, amounting for said tenth part, as your orator believes, to $81,772 08, as the right and property of said Hamilton, subject to certain alle*d*ged assignment made thereof by said Hamilton, as hereinafter mentioned.

But your orator charges that said Wetmore received the said bonds or certificates, or the choses in action upon which, or in satisfaction of which, said bonds or certificates were issued as the property of said Hamilton, and said Wetmore holds the said tenth part as collateral security for a debt due to him by said Hamilton, amounting to some twenty-five hundred dollars, or thereabouts; and your orator is informed and charges, that the claim of said Wetmore, as aforesaid, arose long after the execution and delivery by said Hamilton to your orator of the assignment first above stated; and your orator is advised and charges, that he is entitled to priority, in the payment of his said claim, out of the said tenth part of said fund about to be paid by the Secretary of the Treasury to said Wetmore; and all persons claiming by as-
150 signments subsequent to the aforesaid assignment to your orator, and especially those subsequent to the notice of your orator's said assignment being received by the treasurer of Texas, ought to be postponed to your orator, in the payment and satisfaction of their respective claims upon said fund. Your orator further sheweth, that said Wetmore further claims to receive and hold the proceeds of said bonds or certificates not only to pay and satisfy his own individual claim, including certain commissions, against said Hamilton, in preference to the claim of your orator, but to pay and satisfy certain subsequent orders or assignment of the same fund, drawn or made by said Hamilton, in derogation of the rights and claims of your orator, especially to pay and satisfy an alle*d*ged claim of a certain William W. Corcoran, and George W. Riggs, of the District of Columbia, trading as Corcoran & Riggs, and who are prayed to be made defendants hereto, amounting to a supposed sum of thirty thousand dollars, or thereabouts; also, a claim of a certain H. R. W. Hill, of New Orleans, in the State of Louisiana, now deceased, (and whose administrator, when discovered, is prayed to be made a defendant,) as alle*d*ged assignee of a certain James Robb
151 & Co., amounting to fifty-eight thousand dollars, or thereabouts; also, a claim of Charles Macalester, Josiah Randall, Samuel Jaudon, James A. Bayard, Christopher Fallon, and William B. Reed,

of the State of Pennsylvania, or some of them, as trustees of the Bank of the United States, of Pennsylvania, who are prayed to be made defendants hereto, amounting to twelve thousand and fifty-one dollars and forty-eight cents, or thereabout. And your orator charges that said Wetmore claims to receive the whole proceeds of the tenth part of said bond or bonds, certificate or certificates, and apply the same to the payment of commissions, as well as all of said recited claims, including his own, and excluding that of your orator, which is the eldest, and entitled to priority, and that unless he is enjoined and restrained from so acting, your orator's claim will be greatly jeopardized, and may be totally lost. Your orator believes and charges, that all of said orders and assignments made or drawn by said Hamilton, except that in favor of said Wetmore, were drawn and made to affect the rights and claims so assigned to your orator, after the State of Texas had express notice, by and through its treasurer, who was the proper officer to receive
152 said notice of the assignment so made by said Hamilton to your orator; and your orator is advised that by reason of said assignment to him, and said notice to the State of Texas, he became the equitable assignee of all the claims of said Hamilton, as recited in said assignment, or so much thereof as was necessary to pay his said claim, and no subsequent order or assignment drawn or made by said Hamilton could prejudice or affect your orator's rights as such equitable assignee. And your orator further charges, that said Wetmore had notice of your orator's said assignment at the time the claim of said Wetmore to and lien on said tenth part first arose or was contracted.

Your orator further sheweth and charges that the said Corcoran & Riggs, and the said H. W. R. Hill, as well as his supposed assignors James Robb & Co., and the said Jaudon, Bayard, Fallon, Randall, Macalester, and Reed, trustees of said bank of the United States or some of said trustees had actual notice at the time of receiving and taking the orders or assignments given to them respectively by said Hamilton of the assignment so made to your orator; but in case it shall appear that the said named parties had no such actual notice as
153 is herein charged upon them, then your orator further sheweth and charges that said named parties and each of them were, at the time of receiving the orders or assignments so given to them respectively by said Hamilton, chargeable with constructive legal notice of the previous assignment made by him to your orator, which was then filed in the office of the treasurer of Texas, among the public archives thereof, and to which the said named parties and each of them might and ought to have referred to ascertain the state and condition of the fund or debt which said Hamilton was assigning or attempting to assign to them in derogation of the rights of your orator; and he charges that the omission of said named parties and each of them to make the proper enquiries and searches at the office and among the archives of the treasurer of Texas, and to file their assignments in the said office was, under the circumstances, such gross laches and neglect that, by reason of the superior diligence of your orator in the premises he is entitled to priority over said named parties and each of them in the application of the proceeds of said bonds or certificates. Your orator further sheweth that, in case it should appear that your orator is not, by reason of the
154 *reason of the* premises entitled to such priority, then he is entitled to a discovery on oath from the said Wetmore, Corcoran, Riggs, Jaudon, Bayard, Fallon, Macalester, Randall, Reed, and the administrator of said Hill, when discovered, in respect to the origin and consideration of their respective claims against the said Hamilton, as pro-

tected and secured by orders or assignments as aforesaid, and in respect to any other collateral security or indemnity they or any of them may hold on account of, or in respect to, said claims, with a view to the marshalling of said securities in favor of your orator, and to a discovery of any payments or satisfaction they may have received therefor in any way, and to a production of all contracts, orders, and assignments which they or any *or any* of them may hold from said Hamilton or any one else in respect of or concerning their said claims.

Your orator further sheweth that, of the remaining nine-tenths of the proceeds of said three bonds or certificates, the said Wetmore claims to hold the same on account of, and subject to the order of, Charles Macalester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, and James A. Bayard, or some of them; but your orator charges that the said Hamilton is equitably entitled to a portion
155 of said nine-tenths amounting to at least the sum of $83,000; and your orator claims and insists that the interest of said Hamilton is said nine-tenths of said proceeds, is included in and passed to your orator by said assignment to him, and that he is entitled to a discovery of the amount of said Hamilton's interest therein, and to an injunction against the said Wetmore, his assignees, aiders, and abettors, restraining them and each of them from receiving the said sum of $83,000, part and parcel of the proceeds of said nine-tenths of said bonds or certificates, as well as the aforesaid one-tenth part thereof, amounting to $81,772 08.

Your orator further sheweth that Henry S. Holford and Frederick S. Holford, administrators with the will annexed of James Holford, late of London, in the Kingdom of Great Britain—they having obtained letters of administration in the State of New York—have also filed with the secretary of the tre'suary, under the provisions of the above-recited act of Congress, a bond or certificate numbered 1164, and issued by the State of Texas for the payment of one hundred and forty-six thousand eight hundred and ninety dollars, with interest thereon, as stated therein.

And your orator further sheweth that the said certificate was de-
156 signed to include, among other amounts the amount of fifty-one bonds of one hundred pounds sterling each, which had been previously issued by said State of Texas, and which said fifty-one bonds were the right and property of said James Hamilton.

Your orator further sheweth that, prior to the making and issuing of said certificate the said Hamilton did make over and transfer the said fifty-one bonds to James Holford, the testator of said Henry S. Holford and Frederick S. Holford, to hold the same as collateral security to cover all advances, liabilities, and reclamations which the said James Holford might make or have against the said Hamilton, until the account between them was finally settled. And your orator sheweth and charges that a portion of the proceeds of said bond or certificate numbered 1164, as aforesaid, corresponding to the amount of said fifty-one bonds is claimed by said administrators of James Holford upon the like trusts and conditions, and for the like purposes as those on which the said fifty-one bond' were made over and transfer'ed to said James Holford, as aforesaid. Your orator further sheweth that, by virtue of the hereinbefore-mentioned assignment to him he is the assignee of all the rights and interests of said Hamilton of, in, and to such portion
157 of such bond or certificate No. 1164 as represents the amount of said fifty-one bonds, and which portion your orator charges amount to a large sum of money, which the said administrators are now claiming and about to receive. And your orator charges that, as such

assignee, he is entitled to have and received the said portion so representing the said fifty-one bonds, subject to such advances, liabilities, reclamations as are specified, as aforesaid, if any such are shown to exist. Your orator has no knowledge and no means of knowing the state of the accounts between the said Hamilton and said James Holford or his administrators, but he charges that, on a fair and equitable settlement of the same that the whole or a large portion of the said sum of representing the amount of said fifty-one bonds will belong to and ought to be paid to your orator as assignee of said Hamilton. And your orator further sheweth that Richard R. Cuyler, of the State of Georgia, who is prayed to be made a defendant, claims some interest in the proceeds of said fifty-one bonds or a corresponding amount of the proceeds of said certificate No. 1164; but your orator requires the said interest to be proved, and denies that the said Cuyler has any interest therein as against your orator and his rights under the assignment.

158 And your orator further sheweth that said certificate No. 1164, also includes among other amounts the amount of fifty-one bonds of one hundred pounds each, and that the said administrators of James Holford claimed to hold a portion of the proceeds of said certificate, corresponding to the amount of said fifty bonds, to the credit, and subject to the order of a certain Gazaway B. Lamar, of New York, who is prayed to be made a defendant, but which portion your orator charges belonged equitably to, and is the right and property of, said Hamilton, and as such passed to your orator by virtue of the assignment to him as aforesaid; and your orator charges that the said administrators of said James Holford are entitled to receive, unless restrained by order of your honorable court, as, and for the proceeds of said certificate or bond aforesaid, and nett sum of $237,203 69 *cts.*; and your orator charges that forty-five thousand dollars, part thereof, is equitably belonging to, and coming to him as assignee of said Hamilton, and that the said administrators ought to be enjoined from receiving the said amount of forty-five thousand dollars, part of the proceeds of said certificate, until your orator can obtain a discovery in relation thereto, and otherwise establish his title to the said sum.

159 And your orator charges that, unless he is paid the amount of his said claim in full out of the proceeds of the bonds or certificates, or some of them, so as atoresaid filed by said Wetmore, and by said administrators of said James Holford, he will be otherwise unable to release his said claim, inasmuch as both the said Wetmore and said administrators, and all the said defendants but Corcoran & Riggs reside out of the jurisdiction of your honorable court, and are now claiming to receive the proceeds of said bonds or certificates, and to hold the same to the exclusion of the claim of your orator.

Your orator is advised and charges that he is entitled to enjoin and restrain the payment of said one-tenth part of the proceeds of said bonds or certificates filed by said Wetmore, and said sum of $45,000, part of the said bond or certificate No. 1164, filed by said administrators of James Holford, and also the said sum of $83,000 coming to or claimed by the said Macalester, Randall, Fallon, William B. Reed, Samuel Jaudon, and James A. Bayard, in order that your orator may have all necessary and proper discovery in relation thereto, and that he may be paid the amount of his said claim out of said funds, or so much thereof as may be found applicable to your orator's said claim.

160 Wherefore, and inasmuch as your orator is remediless at and by the strict rules of the common law, and can only have ade-

quate relief in a court of equity, where such and the like matters are cognizable, and to the end that said Hamilton may answer this bill, and that the said Wetmore may answer and disclose by whom and on what consideration, and for what purpose the said certificates or bonds, and each of them, were originally assigned, or caused to be delivered to him, and if the same was manifested by any writing or agreement that he may produce the same as a part of his answer, and that he may discover and disclose so far as he knows the same, how and for what consideration the said Hamilton became entitled to one-tenth, or a portion of one-tenth, of said certificate, and to what precise portion thereof, and to whom and for what consideration the remaining portion of said one-tenth belongs, and that he may produce and file with his answer any writing or agreement connected with or relating to the same, and also that he may discover and disclose how and in what manner and for what consideration the Bank of the United States, of Pennsylvania, or the trustees thereof, became entitled to the remaining nine-tenths of said certificates or bonds, and produce as part of his
161 answer any written contracts, agreements, or assignments relating thereto and known to him, or to the interest of said Hamilton therein; and also that he, the said Wetmore, may answer and disclose the date and time and amount of money paid or lent by him to said Hamilton, or paid to his use or on his account, and for which he now claims to hold the proceeds of a portion of said certificates as security, and that he may produce as part of his answer any written contract or agreement or order passing between him and the said Hamilton, relating thereto or evidencing said claim, and that he may disclose whether he held or holds any other security for the said claim, and what that security is, or was, as fully as he, the said Wetmore, may have knowledge of the same, and especially whether he has been paid any part thereof, and that the said Wetmore may answer and say whether at the time of receiving said order or direction from said Hamilton to apply or hold a portion of said one-tenth part, or the whole thereof, as security for his said claim, he, the said Wetmore, had notice of the assignment to your orator, and also that the said Wetmore may answer and disclose what he knows to'ching or relating to the orders or assignment to your orator, and especially touching the consideration for which said orders or assignments were drawn, specifying the amount
162 of said consideration, and the dates and other collateral securities connected therewith, if any, to his knowledge, and the date or dates, and manner of his acceptance of the said subsequent orders or assignments, and that he may produce as part of his answer any written contract, agreement, or papers relating to said subsequent orders or assignments, or his acceptance thereof as fully as he may have knowledge of the same, and that he may state in what manner and by what title he claims a commission for collecting the said certificates: And, to the end, that the said William W. Corcoran and George W. Riggs may, on their several corporal oaths, answer and disclose the dates and amounts in money which they actually loaned, paid or advanced to said Hamilton, or paid to his use, for which they took, hold, or claim to hold, any order or assignment from said Hamilton for any portion of said certificates or bonds, or the proceeds thereof, and what amount they now claim as creditors of said Hamilton, and the written evidence thereof, and may disclose whether they took or held, or now hold, any other security or indemnity for their said claim; and if so, that they may state the particulars and the nature of such security or indemnity fully, and that they may produce as part of their answer any order,

163 assignment, contract, agreement or memorandum relating to their said claim or the securities and indemnity therefor, as well as to any order or assignment of any portion of said certificates or bonds or the proceeds thereof, to them or any one for them, and especially that they may state whether any portion of their said claim has been paid or secured in any way to them or any one for them: And to the end that the administrator of said Hill, when discovered, may be made a defendant, and answer on his corporal oath, and disclose the nature and consideration of the assignment made to said Hill by James Robb & Co., or any one for them, and that he may state how and in what manner, and to what amount, and with whose funds the said Robb & Co. were paid, and satisfied their said claim, and how and in what manner, and by what instrument of writing they assigned their said claim to said Hill; and that he may produce, as part of his answer, any contract or written paper known to him in relation to said assignment to him, or the payment of said claim of said James Robb & Co., or relating to the assignment or order made originally or at any time by said Hamilton to said Jas. Robb & Co., or any one for their benefit, and especially that said administrator of Hill may disclose what
164 other securities or indemnity he or the said James Robb & Co. held or now hold for or on account of his said claim against said Hamilton, in addition to the alle*d*ged assignment of a portion of the proceeds of said certificates or bonds, and may state whether he has been directly or indirectly paid or satisfied any part of his said claim, and what is now the real balance, if any, due by said Hamilton and secured by said assignment: And that the said Samuel Jaudon, James A. Bayard, Christopher Fallon, Charles Macalester, Josiah Randall, and William B. Reed may answer on their several corporal oaths, and state for what consideration, at what date, and in what manner they became entitled to claim any portion of the one-tenth part of the proceeds of said certificates or bonds, and that they state the amount now really due to them thereout, and produce as part of their answer any order, contract or agreement relating thereto in any way, and that they may discover and disclose any interest which the said Hamilton may have or claim in the remaining nine-tenths of the proceeds of said bonds, and any writings relating thereto: And that the said Wetmore, the said administrators of James Holford, and all and each of said named defendants, their assignees, aiders and abettors may be enjoined and restrained from asking for, demanding or receiving the sum or
165 sums of money hereinafter specified as coming to them, or any of them, upon any bond or bonds, certificate or certificates filed with the Secretary of the Treasury, by them, or any one for them, with a view to claim the benefit of the act of Congress, passed on the 28 February, 1855, chap. 129, that is to say, that the said Wetmore, his assignees, agents, aiders and abettors, may be enjoined and restrained from asking for or receiving the sum of $81,722 08, being the one-tenth part of said three bonds or certificates, until the further order of this court. And the said Charles Macalester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, and James A. Bayard, and the said Wetmore, or any of them, their assignees, agents, aiders and abettors, may be enjoined from asking for or receiving the amount of $83,000, part of nine-tenths of the proceeds of the said three bonds or certificates filed by said Wetmore with the Secretary of the Treasury, as aforesaid, until the further order of this court: And to the end that the said Henry S. Holford and Frederick S. Holford, administrators of said James Holford, may answer this bill of complaint on their several

corporal oaths, and may disclose and discover what part of said certificate, No. 1164, or the proceeds thereof, represents the said fifty-
166 one bonds, and whether the said part is not held by them as security only for liabilities by said Hamilton to said testator, and if so, that they may state what said liabilities are, and whether they or the said testator received or hold any other security or indemnity for his or their said claims against said Hamilton, and if so, that they may disclose the nature, amount, and particulars of said security or indemnity; and that they may produce, as part of their answer, any and all assignments, orders, agreements, contracts or writing whatsoever relating to said matters, or to the rights of their testator or themselves in the premises, as fully as they have knowledge of the same, and that an account may be taken of the transactions, accounts and dealings between the said Hamilton and said James Holford, or his administrators, with a view to a'certain the rights of your orator, as such assignee of said Hamilton; and that the said Frederick S. Holford and Henry S. Holford, their assignees, aiders and abettors, may be enjoined and restrained from asking or receiving from the Secretary of the Treasury, or other officer of the United States, $45,000, part of the proceeds of said bond or certificate, No. 1164: And that the said Gasaway B. Lamar, and the said Richard P. Cuyler, may answer and disclose their respective right and title to any part of the proceeds of said
167 certificate No. 1164, and all writings, agreements or orders relating thereto, and especially that they may state the amount now really and justly due and owing to them out of said proceeds, and whether they claim or will hold any part of said proceeds, if received by them, for the use and benefit, or subject to the order of said Hamilton, and if so, what amount thereof: And that your orator may have such other and further relief as to your honors may seem just and right: May it please your honorable court to grant unto your orator the United States writ of injunction, directed to the above-named defendants, and enjoining and restraining them as hereinbefore specially prayed, and also the writ of subpœna directed to James Hamilton, William S. Wetmore, Charles Macalester, Josiah Randall, Christopher Fallon, William B. Reed, Samuel Jaudon, James A. Bayard, Frederick S. Holford, Henry S. Holford, Gazaway B. Lamar, Richard P. Cuyler, William W. Corcoran, and Geo. W. Riggs, commanding them, &c.

ROBERT J. BRENT,
For Complainant.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Before the subscriber, a justice of the peace, in and for said
168 county, personally appeared Henry May, and made oath on the Holy Evangely of Almighty God that the facts hereinbefore stated are true to the best of his knowledge and belief, and that he personally has knowledge of many of said facts, and has reason to believe and believes all the facts stated in said bill of complaint to be true.

31 May, 1856.

H. NAYLOR, *J. Peace.*

True copy. Test: JNO. A. SMITH, *Clk.*

169 EXHIBIT A.

Complainant's Exhibit A.

In consideration that I am indebted to Mrs. Mary Martha McRa, in a sum exceeding fifty thousand dollars, but the precise amount of which

is not now ascertained, and for which suit has been brought against me in the circuit court of the District of Columbia, for the county of Washington, and in which A. P. Butler, J. E. Holmes, and Henry May have become sureties and bail to the marshal of the said district, and the said parties entered into the said bail bond on the express understanding and condition that I should deliver to A. C. Spain, committee of said M. M. McRa, twenty-five negroes and their increase, purchased with the money of said Mrs. McRa, and now on the plantation in Texas, known as the Retrieve Plantation, and which said negroes are designated as the sundry negroes, to be delivered to the said A. C. Spain, on or before the 20th day of April next, unless a stipulated price to be fixed and agreed on between said Spain and myself shall be paid to him before that day; and also, that I should assign to the said A. C. Spain, committee as aforesaid, as well my claims on the Texas government, as also my claims for commissions for services rendered to all and every other person and persons in the prosecution of his and their claims on said government, as collateral security for said debt, and I have this
170 day, in part execution of said agreement and understanding, delivered to said A. C. Spain an order on Capt. O. P. Hamilton, for the said negroes; now I do further hereby, in consideration of the premises, assign, transfer, and make over to the said A. C. Spain, committee of Mrs. Mary Martha McRa, all my claims of whatsoever nature on the said the government of Texas, whether by bond or an open account, (subject to any prior assignment I may heretofore have made of the same,) and also all my right and claim for any commission or compensation for services rendered, or to be rendered, by me to any and every other person and body corporate in the prosecution of any claim or claims for any and every such person and persons and body corporate on the said government of Texas, subject in like manner to any previous assignment thereof, and I do further, for the consideration aforesaid, bind and oblige myself, my heirs, executors and administrators to procure from the person and persons, whoever they may be, holding the legal title to the Retrieve Plantation, in the State of Texas, a mortgage thereon, to secure my said debt to Mrs. McRa, whatever the amount there*fore* may be.

It being understood that the foregoing assignments are made as collateral security for my said bail, this covenant and agreement not to be construed as impairing, but being taken as additional to the said bail bond.

Signed, sealed and delivered this twelfth day of February, 1850.

J. HAMILTON. [L. S.]

Witness:

JOS. H. BRADLEY.

171 EXHIBIT B.—*Statement of Gen. Hamilton's debt to Mrs. McRa.*

1842, Jan'y, 1.	Dividend on bank stock, received	$875 00		
		437 50		
				$1,312 50
	Int. till 1st June, 1856; 14 y'rs 5 mo's, *a* 7 p'r c't p'r an.=100 11-12 p'r c't			1,324 53
" July, 1.	Dividend on bank stock received	$750 00		
		375 00		
				1,125 00
	Int. till 1st June, 1856, 13 y'rs 11 mo's, *a* 7 p'r c't p'r an.=97 5-12 p'r c't			1,095 94
1843, Jan'y 1.	Dividend on bank stock received	$750 00		
		375 00		
				1,125 00

	Int. till 1st June, 1856, 13 y'rs 5 mo's, *a* 7 p'r c't p'r an.=93 11-12 p'r c't			1,061 26
1844, Jan'y, 1.	Dividend on bank stock received	$750 00		
		375 00		
				1,125 00
	Int. till 1st June, 1856, 12 y'rs, 5 mo's *a* 7 p'r c't p'r an.=86 11-12 p'r c't			977 81
" July 1.	Dividend on bank stock received	$350 00		
		375 00		
				1,125 00
	Int. till 1st June, 1856; 11 y'rs 11 mo's, *a* 7 p'r c't p'r an.=83 5-12 p'r c't			938 44
1845, Jan'y 1.	Dividend on bank stock received	$750 00		
		375 00		
				1,125 00
	Int. till 1st June, 1856, 11 y'rs 5 mo's, *a* 7 p'r c't p'r an.=79 11-12 p'r c't			899 06
" July 1.	Dividend on bank stock received	$750 00		
		375 00		
				1,125 00
	Int. till 1st June, 1856, 10 y'rs 11 mo's, *a* 7 p'r c't p'r an.=76 5-12 p'r c't			859 69
1846, Jan'y, 1.	Dividend on bank stock received	$750 00		
		375 00		
				1,125 00
	Int. till 1st June, 1856, 10 y'rs 5 mo's, *a* 7 p'r c't p'r an.=72 11-12 p'r c't			820 31
				17,164 54
1846, Jan'y	Principal realized on sale of bank stock is	$37,500 00		
	Int. from Jan'y, 1846, to 1st June, 1856, 10 y'rs 5 mo's, *a* 7 p'r c't p'r an.,	27,343 75		64,843 75
	Whole debt is 1 June, 1856			$82,008 29

172 EXHIBIT C.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Be it known that, on this eleventh day of February, in the year of our Lord eighteen hundred and fifty, before me, the subscriber, a justice of the peace in and for the county aforesaid, personally came and appeared Albertus C. Spain, and made oath, according to law, that James Hamilton is justly and bona fide indebted to Mrs. Mary Martha McRa in the full and just sum of forty-nine thousand one hundred and eighty-seven dollars and fifty cents, with interest on the sum of forty thousand dollars, part thereof, at the rate of eight per cent. per annum from the first day of May, eighteen hundred and forty-six; and interest on one thousand there hundred and twelve dollars and fifty cents, other part thereof, at the rate of seven per cent. per annum from the first day of January, eighteen hundred and forty-two; and upon the sum of eleven hundred and twenty-five dollars, other part thereof, at the rate of seven per cent. per annum from the first day of July, eighteen hundred and forty-two; and upon the sum of eleven hundred and twenty-five dollars, other part thereof, at the rate of seven per cent. per annum from the first day of January, eighteen hundred and forty-three; and upon eleven hundred and twenty-five dollars, part thereof, at the rate last aforesaid, upon the 1st day of July; and upon the same amount last aforesaid, at the
173 same rate of seven per cent. from the first day of January, eighteen hundred and forty-four; and upon the same amount from the first day of July, eighteen hundred and forty-four; and upon a like amount from the first day of January, eighteen hundred and forty-five; and upon a like amount from the first day of July, eighteen hundred and

forty-five; and upon a like amount from the first day of January, eighteen hundred and forty-six; the said several sums being respectively parts of the said debt of forty-nine thousand one hundred and eighty-seven dollars and fifty cents.

And the said deponent further saith that the grounds, nature, and particulars of the said claim are as follows:

The said Mary Martha McRa, being a citizen of South Carolina, and possessed of large estates, confided to the said James Hamilton, as trustee, for her use and benefit the management of a considerable sum of money, which he, from time to time, and at sundry times, (as this deponent has been informed by the said J. Hamilton, and believes to be true,) invested in subscriptions in the stock of the Bank of Charleston, in his own name, with the description of "trustee," and from to time continued to receive and pay over to the said cestui que trust the dividends therefrom arrising until the spring of the year 1840, when a settlement, or pretended settlement, was made between the said
174 Hamilton and the son of the said Mary Martha, and an agreement and understanding was then had between them that the dividends thereon should thereafter be paid to the house and firm of John Kirkpatrick & Co., of Charleston, for the benefit of the said Mrs. McRa. The said stock, at that time, consisted of two hundred and fifty old and two hundred and fifty new shares of the said bank, amounting at par, to $37,500(0,) and it continued to stand on the books of the said bank, in the name of "James Hamilton, trustee," until the spring of the year 1846; that the said James Hamilton had, before the time last mentioned, removed to, and become a citizen of, Texas, and in the spring of the year 1846, without consultation with, or the knowledge of, the said cestui que trust, and without any authority from her so to do, he sold out the whole of the said stock for a large sum of money, which this deponent understands from said Hamilton, amounted to the sum of forty thousand dollars, and appropriated the same to his own use, and hath since offered to pay eight per cent. interest thereon from the first day of May, 1846.

And this deponent further states and shows on oath that, in or about the month of January, 1846, and previous to the time the said
175 stock was so sold by the said James Hamilton, and the proceeds thereof converted by him to his own use, the said Mary Martha McRa had become and was so far of unsound mind and insane as to require the interposition of her freinds for the protection of her person and the preservation of her estate, and proceedings for that purpose were duly instituted in the chancery court of Sumter district, in South Carolina, and the same was so far proceeded in that, on the 9th day of June, 1846, the said court, on the finding of a jury that the said Mary Martha was a lunatic, appointed this deponent a committee to take the care and management of the real and personal estate of the said lunatic, Mary Martha RcRa; that he duly qualified as such committee, and, on examining the condition of the said estate, ascertained that after the settlement between the said James Hamilton and the son of Mrs. McRa, in April, 1840, by which it was agreed that the dividends of the said stocks should be paid to said John Kirkpatrick & Co., the said James Hamilton received the same every half year, beginning on the first day of January, 1842, and continuing to the first day of January, 1846, both inclusive, and amounting in the whole to the sum of nine thousand one hundred and eighty-seven dollars and fifty cents, and that he had converted the same to his own use, and hath not rendered the
176 account thereof to this day; that the legal rate of interest in South Carolina is seven per cent., and he is justly chargeable therewith;

that the said James Hamilton having removed to Texas, as this deponent has above stated, has repeatedly, by letters to this deponent, admitted his indebtedness to the said Mary Martha McRa, and all the facts hereinbefore stated as to his said breach of trust in the sale of the said stocks, and hath promised from time to time to secure the same, and hath pretended that the same is fully secured in some investment in Texas, but to this day he hath not paid to deponent, as agent, trustee, and committee of said estate, any portion of said debt, or given him any security or satisfaction for the same, or for any part thereof; and so this deponent doth, on the facts aforesaid, allege that the said debt of forty-nine thousand one hundred and eighty-seven dollars and fifty cents, so as aforesaid stated to be due from said James Hamilton to said Mary Martha McRa, was contracted through a breach of trust by said James Hamilton.

ALBERTUS C. SPAIN.

Subscribed and sworn to before this 11th February, 1850.
J. W. BEEK, J'R.

176½ *Agreed statements used as evidence.—Filed.*

The following statements, filed 9 Nov., 1869, on which Spain's case was tried, are agreed to be taken as evidence in this cause.

That the fund in the Treasury of the U. States "became due and payable to said Hamilton under an agreement with the Bank of the United States, evidenced by two letters of the trustees of the bank."

(These are exhibited by the defendant's answer in the present case.)

"That the trustees of the bank have withdrawn all claim to the fund in controversy and have now no interest in the same."

"That James Dick Hill, the son and only heir of said Harry R. W. Hill, has succeeded to all the rights and interests of his father, and that the answer of Bass as ex'or, to the bill of the James River & Kanawha Company shall be considered as the answer of said James D., in this case."

"That the annexed copy of certificate No. 1031 shows truly the original filed by Wetmore at the Treasury Department, in April 1856, and that two other certificates filed at same time are in the same form and are to be considered as evidence in this case."

176½*a* CERTIFICATE No. 1031.

No. 1031.] REPORT 168. [1st class.

Public debt of the late Republic of Texas.

This is to certify that William S. Wetmore, has under the provisions of the act of the legislature of the State of Texas, entitled: "An act to provide for ascertaining the debt of the late Republic of Texas," approved 20th March, 1848, filed with the auditor and comptroller, 378 sterling bonds of £250 each, with 60 interest warrants for £12 10 attached, which bonds were issued on the 1st July, 1839, under the provisions of the several acts of Congress of the Republic, authorizing the President to negotiate a loan of five millions of dollars, passed 18th Nov., 1836, the 16th May, 1838, and 22 January, 1839, redeemable thirty years from the date of issue, and bearing an annual interest of ten per cent., payable semi-annually. For the payment of said bonds and in-

terest, the faith and revenues of the republic were solemnly pledged. The said bonds, in the currency of the United States and of this State, amount to $457,380, the interest in which, at the rate of ten per cent. to the 1st July, 1849, amounts to $457,380, said claim according
176½*b* to the data before us was issued by the late government of Texas at 87$\frac{9}{20}$ cents on the dollar, and was at that rate so available, making the principal equal to $400,000 and the interest at the same rates equal to $400,000 in par funds.

In testimony whereof we have hereunto set our hands and affixed our seals of office at Austin this 9th of November, A. D. 1849.

JAMES B. SHAW, *Comptroller.*
JNO. M. SWISHER, *Auditor.*

(Endorsed:)
An assignment by Wetmore to Richard H. Bayard, Jas. S. Newbold, Herman Cope, and Thomas S. Taylor, assignees of the Bank of the U. S., of $\frac{9}{10}$ of the within certificates.
11 APRIL, 1854.

An assignment by Bayard and others named as above, to Charles McAlester, Josiah Randal, Christopher Fallon, and William B. Reed, $\frac{9}{10}$ of the within certificates.
4TH AUGUST, 1854.

176½*c* It is agreed that the following statement of P. Phillips is to be used in evidence as if taken by deposition.

R. J. BRENT, *for Def'ts.*

The fee paid me by Bass, ex'or of Hill, in the case of Spain, was $3,538. The amount of $1,500 included in this charge was in consequence of the injunction proceedings had in the case.

P. PHILLIPS, *for Pl'ff.*

It is agreed that the answer of Bass as executor to the James River and Kanaw*ah* Company was filed on the 17th October, 1856, and was taken and filed as an answer in this case on the 8th of January, 1861.

R. J. BRENT, *for Def'ts.*

176½*d* *Answer of W. S. Wetmore.*

The answer of W. S. Wetmore to bill 1,174, inserted under the 6th agreement in the agreed statement of facts:

WILLIAM S. WETMORE ET AL. *ads.* THE JAMES RIVER AND KANAWHA CO. } Circuit court, D. C. In chancery.

The separate answer of William S. Wetmore, formerly of New York, and now of Newport, R. I., to the bill of complaint of the above-named complainant.

This respondent, saving and reserving to himself all and all manner of benefit of exception to the bill of complaint of the above-named complainant, nevertheless, for answer thereunto, so far as he is advised, that it is material for him to make answer, doth now, answering say: That in the matter of the complainants said bill of complaint,

the respondent is personally interested to the extent of the principal sum of twenty-five hundred dollars ($2,500,) with interest, costs, and charges, lawfully accrued; and, accordingly, the said sum of twenty-five hundred dollars having been loaned and advanced by him to the said James Hamilton, upon the security of the fund here in controversy, as will be hereinafter more particularly set forth. And for the rest he claims to stand as trustee and stakeholder, and has no further interest or concern than that justice may be done between the parties, and that he shall be fully protected and indemnified in all the premises, including the satisfaction of his reasonable commissions, costs, charges, and expenses out of the said fund, by any decree which may be passed by your honorable court in this cause.

This respondent says that true it is, as stated in the bill, that prior to the year 1845, that is to say, in the year 1842, on or about the 9th day of December in that year, the debt of the then Republic of Texas to the Bank of the United States, together with the securities therefor, was duly assigned and pledged to the respondent to secure the repayment, with interest, of a loan and advance then made by him to the said bank, amounting in principal money originally to the sum of fifty thousand pounds sterling, afterwards reduced to the sum of $55,493 24, charged in the bill in that behalf, or thereabouts. That the said securities being the original securities issued by the said republic for the said debt, were then delivered to this respondent, and the same, or the substitutes therefor, have ever since remained in his possession, until deposited at the Treasury of the U. S. for payment, which payment is prevented by the injunction of your honorable court.

This respondent says that the said debt of the bank of the U. S. to him was satisfied and paid, to wit, on or about the day of , in the year one thousand eight hundred and . But in the meantime, the securities originally issued by the said republic had been substituted by those which now represent the said original debt at the Treasury of the U. S., the said substituted securities having been issued to this respondent, who alone was entitled to receive the same.

176½*e* And so the legal title in all the fund aforesaid, (so far as there can be legal title in the same,) was, from the 9th Dec'r, 1842, and still remains, in this respondent. But as to nine-tenths ($\frac{9}{10}$) of the debt aforesaid to which he has such legal title, this respondent's equitable and beneficial interest depended on the loan and advance so as aforesaid made by him to the Bank of the U. S., and on the satisfaction thereof, as aforesaid, was extinguished. But while your respondent's legal and equitable title, and actual possession of and in the said securities continued in respect of his said loan and advance to the said bank, and before the said loan and advance had been paid, to wit, on the 16 Sept., 1850, the trustees of the said bank respecting the same, fully and in all the premises, addressed to your respondent the letter of that date, of which he believes that the complainant's "Exhibit G," (copied in page 196,) is a true copy, whereby it appears that as to one-tenth of the amount, value, and proceeds of the said securities over and above the said sum of $55,493 24, with interest from 9 Dec'r, 1842, one James Hamilton, a defendant in this suit, was, by contract and agreement with the trustees of the said bank respecting the same, as aforesaid, the real and equitable owner, and upon satisfaction of the said securities would be entitled to have and receive the said one-tenth from your respondent; and whereby, the said trustees having the equity of redemption in the said securities directed and appointed that your respondent, holding the legal title in the same, should, after satis-

faction of your respondent's claim in the premises, hold one-tenth of the amount which should be realized over and above that sum, subject to the order of the said James Hamilton.

Your respondent further shews, as also appears by the said "Exhibit G," that this was with the assent and on the request of the said James Hamilton; and he further says, that at the date of the said Exhibit G, and at the time the same came to his knowledge, he was not advised and had no reason to know or believe that any person or persons whatsoever other than your respondent had any right, title, or interest, under the said James Hamilton, in or to the said one-tenth so as aforesaid assigned and appointed to be received and held subject to his order. And your respondent says, that before and when the said assignment and appointment (Exhibit G) came to his knowledge he believed, and had valid and sufficient reason to believe, that the said James Hamilton was the equitable and sole beneficial owner of one-tenth of the amount, value, and proceeds of the said debt of Texas to the Bank of the U. S., (less the amount of 10 per cent. on the sums due by the bank to this respon't,) of which he, your respondent, held the legal title, with the equitable interest aforesaid, and subject to the further lien to your respondent hereinafter stated; and that the said one-tenth was, (without any other lien, incumbrance, assignment, or contract whatsoever, legal or equitable, in any other person or persons, or to any extent whatsoever derived from the said Hamilton,) wholly and absolutely the right of the said Hamilton, and subject to his order and disposition. And the respondent says, that shortly prior to the date of the said Exhibit G, to wit, on the 30th day of August, 1850, re-
176½f lying upon his legal and equitable title in, and possession of, the securities, and upon the statements and assurances of the said Hamilton to the same effect with the said Exhibit G, and upon the security of the said Hamilton's assignment of all his interest in the contract and fund mentioned in said Exhibit G, before the said Exhibit G came to his hands, but in anticipation and reliance thereon, and upon the contract of 16th Oct., 1845, to which the sum refers, and upon the said assignment, he did, to enable the said Hamilton to further prosecute the said claim, loan and advance to the said Hamilton the sum of twenty-five hundred dollars ($2,500) at the city of New York, upon legal interest, and then and there received from the said Hamilton, his (Hamilton's) promissory note for the said sum of $2,500, dated at New York, and payable there on the first day of March then next, (1851,) with interest from date, which said note your respondent has ready to produce and prove when and where may be required, and which has never been in any manner or to any extent paid or satisfied; and at the same time received from the said Hamilton the assignment above mentioned as security for the said note, a true copy of which assignment is herewith exhibited marked W, (copied in page —,) S. W. No. 1, the original whereof he has ready to produce and prove when and where may be required. And so your respondent claims and humbly insists, as he is advised by counsel, that by reason of the premises he is absolutety entitled, in priority to all others, to have and receive out of the said one-tenth of the said debt of Texas to the Bank of the United States the payment and satisfaction of his said loan and advance of $2,500, with interest and all lawful costs and charges.

And further he says, that he is entitled to his reasonable and proper commissions on the whole of the said one-tenth, which one-tenth it was his right and duty to receive at the Treasury, and in respect of which he had already earned such commissions when, by the injunction of

your hon'ble court, he was restrained from receiving the fund then about to be paid to him. And proceeding now to answer with respect to the various claims by others upon the said fund, he says that he hath no pecuniary interest in respect of such claims, but humbly insists that he shall be fully protected and indemnified in all respects in the premises by any decree which may be passed in this cause.

This respondent says, that as to the claims set up by the complainants in their said bill, the first knowledge or information which he had that the complainants claimed anything in the premises, by way of assignment or lien derived from the said Hamilton, of or in the said one-tenth of the Texas debt to the Bank of the United States, was on the tenth day of May, 1856, on which day this respondent received a letter from Thomas H. Ellis, president of the complainant's company, dated May 1st, 1856, and to which he replied on the same day of its receipt, copies of which said letter and reply are herewith filed, marked W. S. W., No. 2. In which said reply your respondent states, as the fact was, that the said letter was received on the 10th day of May, 1856, and brought to him the first intimation of any assignment from the said Hamilton to the said complainants. But the respond-
176½*g* ent remarks that the complainants shewed themselves aware of the previous assignment to him.

Your respondent has no knowledge of the grounds or particulars of the complainant's claim except such as he has derived from hearing and from the bill in this case, and he therefore does not admit the same, but requires that the complainant make due proof in the premises of every matter or thing which may be material to this case set up by the bill. And this respondent further answering says: That shortly after the loan and advance so as aforesaid made by him to the said James Hamilton, and shortly after the order of the trustees of the Bank U. S. (Compl't's Exhibit G) there was presented to him, from the defendants Corcoran and Riggs, an order of the said James Hamilton as follows:

WASHINGTON, 21*st Sept.* 1850.

W. S. WETMORE, Esq., *New York.*

SIR: Out of the first moneys coming into your hands from proceeds of Texas bonds referred to in the annexed copy of an order from J. S. Taylor, secretary, on yourself, after your own claim shall have been satisfied, you will please pay to Messrs. Corcoran and Riggs, or order, thirty thousand dollars for value received, first deducting the amount of twenty-five hundred dollars loaned me in August last, with interest, and oblige.

Y'r ob'd't s't,

J. HAMILTON.

Which said order your respondent, relying upon the right of the said James Hamilton in the premises, accepted on presentation, by writing thereon as follows: "Accepted. W. S. Wetmore, Sept. 24th, 1850;" and which said acceptance was made in fact on the day when the same bears date. And this respondent further says that afterwards, to wit, on or about the 24th day of March, 1851, the said James Hamilton executed in favor of Messrs. Corcoran and Riggs, who promptly thereafter notified the same to your respondent, a further paper as follows, to wit:

"NEW YORK, *March 24th*, 1851.

"To W. S. WETMORE, Esq.:

"Be pleased, when you receive the balance which may be coming to

me after the payment to yourself on the foregoing order of the trustees of the Bank of the U. S. in my favor, to hold the same subject to the order of Messrs. Corcoran and Riggs, of Washington, to whom I have assigned it for a valuable consideration.

"J. HAMILTON."

Which said last aforegoing writing was subjoined to the order of the said trustees, (Comp't's Exhibit G,) and whereon was also written the acceptance, by this respondent, of said order, and a draft for $30,000 by the said Hamilton in favor of the said Corcoran and Riggs, in words and figures as the same appears in the said Exhibit G, which said draft or order for $30,000 this respondent understands to be for 176½*h* the same sum referred to in the draft of 21 September, 1850, hereinbefore set forth. And this respondent further saith, that afterwards, to wit, on the day of May, 1851, he received notice of a certain paper of assignment, purporting to have been executed by the said Hamilton to James Robb & Co., with a notarial copy of the said assignment which is herewith exhibited, marked W. S. W., No. 3 (copied in page 169,) and also a letter from Messrs. Corcoran and Riggs, dated 10th May, 1851, notifying this respondent that they relinquished all claim upon the fund in question, over and above the aforesaid acceptance for $30,000, in favor of the said assignment to the said Ja's Robb & Co., which letter is herewith exhibited, marked W. S. W., No. 4, (copied in page 84;) and your respondent also received, at or about the same time, a letter from the said James Robb & Co., dated New Orleans, April 29th, 1851 which is herewith exhibited, marked W. S. W., No. 5, (copied in page 84,) and to which he replied by letter of 12th May, 1851, a copy of which is exhibited, marked W. S. W., No. 6, (copied in page 85;) and thereafter, to wit, on or about the 6th day of June, 1853, your respondent received from the said James Robb & Co. the letter herewith exhibited, marked W. S. W., No. 7, (copied in page 86,) whereby it would appear that they had assigned their claim in the premises to H. R. W. Hill. And this respondent further shews that, subsequently to the dates of the transactions hereinbefore referred to, to wit, on or about the 31st of May, 1856, he received notice of the claim of Pierce Butler in the premises, by letter from the Hon. F. B. Cutting, his attorney, which letter is herewith exhibited, marked W. S. W., No. 8. (copied in page 86,) whereby it would appear (though your respondent hath no knowledge thereof and cannot admit the same) that the said Pierce Butler had, so early as the 19th of June, 1850, (and before any of the other assignments,) an order and assignment, addressed by the said James Hamilton to the said trustees, for $5,000 and interest, payable out of the fund here in controversy; and as to the claims by the said A. C. Spain, committee, &c., mentioned in the said bill, this respondent says that he had no notice or knowledge in respect of his pretensions in the premises until after the filing of his bill in this court setting up his claim touching the same fund here in controversy.

And this respondent having now fully answered, prays that such decree may be passed in the cause as will dissolve the injunction, as to him, to the extent of allowing him to receive the amount of his loan and advance of $2,500 aforesaid, with interest according to the law of New York, where the said loan was made and was payable, and also the amount of his commissions upon the whole amount which he is entitled to receive, and would have received but for the injunction in this case, together with his counsel fees and reasonable expenses in the premises, and that he may be fully protected and indemnified so far as

he is a trustee and stakeholder in the premises; and that he may be herein dismissed with costs, &c.

W. S. WETMORE.

CARLISLE, *Solicitor.*

176½*i* *Order of reference to auditor.*

SPAIN
vs.
WETMORE, CORCORAN & RIGGS, HILL & AL.

The money admitted to be in the Treasury U. S., by the agreed statement, and held under injunction in this case, is $72,505 12.

Under the agreement of the B'k U. States with Gen'l Hamilton, of the 16th Oct., 1845, he had no lien for his commissions on the Texas bonds due to the bank, and then under pledges to Wetmore for money advanced to the bank.

His commissions, by the terms of the agreement, were to be computed and paid "on whatever sum or amounts of our said claim which, through your instrumentality shall be recognized and paid over to us, over and above the amounts for which the said bonds are pledged as aforesaid."

176½*j* This agreement gave to Hamilton only a personal claim against the bank for his ten per cent., and that both parties so understood it is apparent from the subsequent order of the 16th Sept., 1850.

The notice, therefore, of complainant to Texas was of no avail.

We are all of opinion that the legal title in this fund under the mortgage of the B'k U. States to Wetmore, the certificates issued to Wetmore by Texas, and the order of the trustees of said b'k to Wetmore, with the assent and at the request of Gen'l Hamilton, of date the 16th Sept., 1850, was always, from the 9th Nov'r, 1849, and still is, in said Wetmore. It was not intended to be conveyed, nor was it conveyed to said bank or its trustees by the transfer of Wetmore to said trustees of the date the 11th Apr., 1854, the day when Wetmore's mortgage debt was paid by the banks, nor did it revert to said bank by said payment.

Wetmore's transfer of $\frac{9}{10}$ of the certificates of Texas debts held by him to R. H. Bayard and al., assignees of the bank, and by $\frac{9}{10}$ths on the 11th April, 1854, strongly implies, and is a recognition by Bayard and al., that the remaining $\frac{1}{10}$ of the Texas certificates was to remain as before, in Wetmore's hands, under the bank's order of the 16th Sept'r, 1850.

The condition in the order of the 16th Sept'r, 1850, by which any reverter on payment of the mortgage debt could be claimed was only for the benefit of the bank. The bank by accepting the deed of the 11th April, 1854, for $\frac{9}{10}$ths, renounced any such benefit as to the remaining $\frac{1}{10}$th.

From the 16th Sept., 1850, Wetmore, we think, was trustee of the fund to pay Hamilton's debts, and the case of Corcoran & Judson, in 17th Howard, settles the rights and priorities of Hamilton's creditors, and requires us to pay them in the order of date in which their claims were notified to and accepted by Wetmore. We, therefore, this 1st Feb'y, 1861, direct the auditor of this court—

1st. To state and allow Wetmore's claim for $2,500 00, with interest from the 30th Aug't, 1850, to date of his audit.

2nd. To allow the claim of Corcoran & Riggs for $25,000 00, with interest at 6 per cent. from the 25th Sept., 1850, till the whole sum, principal and interest, reaches the sum of $30,000 00, if it reaches that sum before the date of his audit.

3rd. To allow to the representatives of H. R. W. Hill, assignee of

Ja's Robb & Co., subrogated to the rights of Robb & Co., pawnees of Hamilton, the sum of $33,500 00, with interest from the 9th March, 1852, to date of his audit, preferring the aforesaid creditors of Hamilton in the order herein suggested, and if any balance of the fund remains, to report the same to the court for its further orders, and to report his whole audit to the court for its final action.

By order of the court.

Test: JNO. A. SMITH, *Clk.*

176½*k* *Report of Auditor.*

SPAIN *vs.* WETMORE AND OTHERS. } No. 1174. Equity.

Report pursuant to and in accordance with the order of reference of the 1st Feb'y, 1861, hereto annexed.

Amount in the treasury for distribution.....		$72,505 12
1. W. S. Wetmore's claim:		
Principal.....	2,500	
Interest from Aug., 1850, to Feb., 1861, at 7 per cent., the loan having been made in New York.....	1,824 34	
Cost of audit.....	9 32	
		4,333 66
		$68,171 46
2. Corcoran & Riggs:		
Principal.....	25,000	
Interest from 25 Sept., 1850, to 2 Feb., 1861,	15,533 33	
	40,533 33	
Limit to this claim on the fund, as prescribed by the court	30,000	
		30,000
Unpaid.....	$10,533 33	
Surplus of the fund.....		$38,171 56
3. Representatives of Hill, assignee of Robb & Co:		
Principal.....	33,500	
Interest from 19 March, 1852, to 2d Feb., 1861.....	18,957	
	52,457	
The whole balance of the fund being.....	38,171	
		38,171 46
Only the same is absorbed by this third claim, leaving no surplus of the fund, and nothing to pay the balance due on this claim of	$14,285 54	

Respectfully submitted,

W. REDIN,
Auditor.

2 February, 1861.

Thereupon the said complainant, by his solicitor aforesaid, and the said defendants Wetmore, and Corcoran & Riggs, by their solicitors aforesaid, on the 13 February, 1861, filed the following exceptions to the report of the auditor, to wit:

[REC. CCLIII, D. T. 1861.]—10.

176½*l* *Exceptions by compl't to auditor's report.*

ALBERTUS SPAIN *vs.* HAMILTON AND OTHERS. } No. 1171. In equity.

The complainant in this case excepts to the report of the auditor filed therein on the second of February, 1861, as follows:

First. Because the auditor has totally disallowed the claim of complainant.

Second. Because he has allowed the claim of said Wetmore, and of said Corcoran & Riggs, and of said representatives of Hill, assignee of Robb & Co., respectively, as stated in said report; and complainant hereby excepts to each and every of the said allowances by said auditor.

BRADLEY & BRENT,
Sol'r for Compl.

Exceptions by def't.

SPAIN *vs.* WETMORE AND AL. } C'r. c't D. C. In eq., No. 1174.

Exceptions to the aud'rs report filed for W. S. Wetmore, one of the defendants.

This defendant excepts to the report for the following reasons:

1. Because the auditor allows only the principal debt due to this defendant ($2,500) and the legal interest thereon, and has not allowed to this defendant his reasonable commissions on the whole sum, to which he had the legal title, (to his $\frac{1}{9}$ of the value of certificates,) and which he would have received but for the interference of the complainant by this bill and the injunction thereon ordered.

2. Because the auditor has not allowed the reasonable expenses and counsel fees which were incurred by this defendant and paid by him in consequence of the character of trustee arising out of his holding the legal title and made necessary by this litigation.

J. M. CARLISLE,
Sol. and of Counsel for Wetmore.

13 Feb., 1861.

176½*m* *Final decree.*

And now, to wit, on the 19th February, 1861, the court, on the furth' hearing of the said cause on the auditor's report and the exceptions thereto, made the following final decree in the premises, to wit:

ALBERTUS C. SPAIN *vs.* HAMILTON ADM'S, WETMORE & AL. } Cir. c't D. C. No. 1171 eq. October term, 1860.

This cause coming on to be further heard upon the auditor's report

and the exceptions thereto, and for final decree according to the stipulation of the parties by their respective solicitors, which is of record therein:

It is now, on this 19th day of February, 1861, upon consideration, ordered, adjudged, and decreed that the exceptions to the report of the auditor, and every of them, be and the same are hereby overruled, and the said report be, and the same is, in all things hereby confirmed.

And it is further ordered, adjudged, and decreed that the injunction heretofore granted in this cause be, and the same is, hereby dissolved; and that the defendant, William S. Wetmore, is entitled to receive, and that he be, and he is hereby, authorized to receive the sum of seventy-two thousand five hundred and five $\frac{12}{100}$, now in the Treasury of the United States, and which the said Wetmore was heretofore restrained from receiving by the said injunction; and that he, the said defendant Wetmore, to have and retain of the said account the sum of four thousand three hundred and thirty-three $\frac{66}{100}$ doll's, ($4,333$\frac{66}{100}$,) being the amount of principal and interest due to him out of the said fund, as appears more particularly in the said report; and that he next pay to Corcoran & Riggs out of said fund the sum of thirty thousand dollars, (30,000,) the am't of their lien on the said fund, and that he then pay to the said J. Dick Hill, or P. Philips, esq., his solicitor of record, the sum of thirty-eight thousand one hundred and seventy-one $\frac{46}{100}$ doll's, being the residue of the said fund, towards the satisfaction of the debt of $33,500, with interest from 19 March, 1852, which he holds under assignment of Robb & Co. And it is further decreed that the complainant pay the costs of this suit, to be taxed by the clerk.

By order of the court. Test:

JNO. A. SMITH, *Clerk.*

177 *Order certifying cause to court in general term.—Filed Dec'r 31st, 1869.*

STEPHEN J. WILLIAMS ET AL.
vs.
JOHN F. MAY ET AL.
} 1274. Eq. doc. 9.

This case involving important questions of law, it is ordered, this 31st day of December, 1869, by the court, with consent of the solicitors for complainants and defendants, that it be referred for consideration, under the act in such case made and provided, to the supreme court of the District in general term.

By the court.

Decree in general term.—Filed March 19, 1870, *for* 15*th.*

Sup. c't Dist. Columbia.

WILLIAMS ET AL.
vs.
MAY, OELRICH, ET AL.
} No. 1274. In equity.

This cause being ready for hearing, and coming on to be heard on the bill, cross-bill, answers, replications, and proofs, and the same having been fully argued by counsel for complainants and defendants,

178 it is, upon consideration, now here adjudged and decreed that John Frederick May and Henry Oelrichs, who executed as obli-

gors the two injunction-bonds set forth in complainants' bill as Exhibits A & B, are liable on said bonds for the payment of all such damage as may have accrued to J. Dick Hill, one of the complainants, by reason of the injunction which was issued on said bonds—

It is further adjudged and decreed that the said obligors are also liable to pay Corcoran & Riggs all such damage as may have accrued to them by reason of said injunction.

Ir is now ordered that the cause be referred to the auditor to state an account of such damages and the proportion that each bond should bear, having due regard to the order of the court which substituted the 2d for the first bond, reserving the right of the obligees to look to the first *for the first* for the accrued interest. In taking and stating this account, the auditor will debit J. Dick Hill with the sum of $2,500, ac-

179 knowledged by him to have been received on the injunction-bond filed in the case of Pierce Butler, and will debit Corcoran & Riggs with the amount of $5,000, acknowledged to have been received by them on the bond filed in the case of the James & Kanaw*ah* Company.

By order of the court.

D. K. CARTTER,
Chief Justice.

180 *Report of auditor on damages.—Filed Mar.* 30, 1870.

WILLIAMS ET AL.
vs.
MAY, OELRICHS, ET AL. } 1274. Eq. doc. 9.

This cause has been referred to me to state an account of the damages that may have accrued to the complainants, J. Dick Hill, and Corcoran & Riggs, respectively, by reason of the injunction heretofore issued upon the security of the bonds referred to in this cause, and the proportion of such damages that each bond should bear.

By the decree of February 19th, 1861, in the original suit, the fund joined was directed to be distributed as follows, viz:

1. Whetmore to receive the whole fund, and to retain for his own debt $2,500, with interest at 7 per c't from August, 1850, to the date of the decree; $1,824 34 and $9 32 for costs, making in all $4,333 66.

2. Corcoran & Riggs to receive the amount of their lien on the fund, $30,000.

181 3. J. Dick Hill, or his solicitor, P. Phillips, to receive the residue towards the satisfaction of his debt of $33,500, with interest from March 19, 1852.

The evidence in the case shows that the fund in Treasury subject to distribution, according to this decree, (see Hemphill Jones' deposition,) was the sum of $69,720 60, which would have been paid over to Wetmore, but for the injunction in Spain's case, and that it was, in fact, paid to his attorney *of* the 20th March, 1861.

The delay occasioned by the injunction then was from June 3d, 1856, to February 19th, 1861, four years, 8 months, and 16 days.

This involved not only a loss of interest for this period to Hill, but a loss of principal, inasmuch as part of the principal sum, which he would have received, was absorbed for the interest due on the prior claims.

If the fund had been paid at the time when the injunction was issued, the amount received would have been as follows, viz:

182	Total for distribution, the sum of.....		$69,720 00
	Wetmore's debt.....	$2,500	
	Int. @ 7 % from Aug. 30th, 1850, to June 3d, 1856, date inj'n	1,006 25	
		3,506 25	
	Corcoran & Riggs.....	30,000	33,506 25
	Leaving for Hill.....		$36,214 35
	In consequence, however, of the interest paid to prior claimants & costs, he rec'd only		35,386 94
	Leaving a deficiency of.....		827 41
	He also lost interest on the $36,214 35 for 4 y'rs, 8 mo's, 16 days		10,230 55
			11,057 96
	Add counsel fees		1,500
			$12,557 96

It appears from the proofs that the injunction caused an increase of the counsel fees, which Hill had to pay, and I allow it as within the scope of the condition of the injunction bonds in the cause.

The following authorities are relied on as establishing the propriety of this allowance, viz: Edwards v. Bodine, 11 Paige, 226; Aldrich v. Reynolds, 1 Barb., ch'y, 616; Corcoran v. Judson, 24 N. Y., 107; Prader v. Gwyn, 28 Cal., 12.

183 J. Dick Hill received, however, the sum of $2,500 on account of this claim on the bond filed in the case of Pierce Butler, which reduces his claims for damages to $10,057 96.

I am also to state the proportions of this amount to be borne by the two bonds. John F. May's bond is dated May 31, 1856, and that of Oelrichs was substituted for it on the 23d of April, 1859.

The right is reserved to the obligees, by the order of substitution, to have recourse to the original bond for interest theretofore accrued, at their election, and both Hill and Corcoran & Riggs, have so elected.

The amount due on the two bonds are so nearly equal, that I have applied the payment of $2,500 equally between them.

The interest on $36,214 35, from June 3d, 1856, date of the injunction, to April 23d, 1859, date of substitution of new bond, is.....		$6,277 15
Deduct proportion of $2,500, paym't.....		1,250
Bal. to Oelrich's bond, $6,280 81		5,027 15
Less proportion of $2,500, 1,259		5,030 81
		$10,057 96

184 I therefore report that J. Dick Hill is entitled to recover on the bond of Jno. F. May $5,027 15, and on the bond of Oelrichs $5,030 81.

The damages sustained by Corcoran & Riggs, in consequence of the injunction, are measured by the interest on the amount receivable by them at the date of the injunction, $30,000 00, for the same period above-mentioned, viz, 4 years, 8 mo's, & 16 days, the duration of the detention, and such counsel fees as may have been occasioned by the injunction.

The interest would amount to		$8,475 00
Add for counsel fees:		
See accompanying dep. of Mr. McPherson		1,000 00
		$9,475 00
From which is to be deducted:		
Am't rec'd by them p'r Ja's Riv. & Kanawah Co		5,000 00
Balance due for damages		$4,475 00

But in apportioning this between the two bonds, I state it as follows:

Interest from June 3d, 1856, date of injunction, to April 3d, 1859, date of 2d bond	$5,200	
Less proportion of $5,000 p'd	2,744 06	
		$2,455 94
Interest & counsel fees chargeable to second bond.	$4,275	
Less proportion of $5,000, p'd	2,255 94	
		2,019 06
		$4,475 00

185 I therefore report that Corcoran & Riggs are entitled to recover on May s bond $2,455 94, and on the bond of Oelrichs $2,019 06. This suit being for damages not liquidated I have not allowed interest from the date of the dissolution of the injunction, which was the date when the cause of action accrued, but report the above amounts to bear interest from the commencement of this suit, May 1, 1868.

WALTER S. COX,
Auditor.

Mr. Brent desires an alternative statement to be made, on the assumption that the money was not payable under the acts of Congress until January 1, 1861.

In this view, the statement would be as follows:

Amount for distribution		$69,720 60
Whetmore's debt	$2,500 00	
Int. 7 % fr. Aug. 30th, 1850, to Jan. 1st, 1861	1,808 33	
	$4,308 33	
Corcoran & Riggs	30,000 00	
		34,308 33
Balance for J. Dick Hill		$35,412 27

186 This is all that J. Dick Hill would be entitled to receive, and the injunction would have detained this from him only one month and eighteen days. The damages would then be as follows, to be recovered entirely on the Oelrichs bond, viz:

Interest to Hill fr. Jan. 1st to Feb'y 19, 1861, on above sum of $35,412 27	$283 29	
Counsel fee on above	1,500 00	
		1,783 29
Corcoran & Riggs, int. on $30,000 fr. Jan. 1st to Feb'y 19th, 1861	$240	
Counsel fee	1,000	
		1,240 29
Total damages		$3,023 58

WALTER S. COX,
Auditor.

Auditor's fees $40 00.

McPherson's deposition as to fee.—Filed Mar. 30, 1870, *with auditor's report.*

J. D. McPherson being sworn, says, I am familiar with the original proceedings in the case of Spain v. Hamilton. I know that the counsel fee in the cause paid by Corcoran & Riggs was $4,000—$3,000 in the court & $1,000 for services in the sup. court. Of the whole fee, the proportion chargeable to the injunction w'd be not less than $1,000, in my judgment.

JNO. D. McPHERSON.

187 *Exceptions of defendants to auditor's report.—Filed April* 4, 1870.

WILLIAMS ET AL. *vs.* MAY ET AL. } 1274. Eq. doc. 9.

The defendants John F. May and Henry Oelrichs except to the auditor's report as follows, viz:

1. Because the auditor has allowed to the representatives of H. R. W. Hill for deficiency $827 41.
2. Because the auditor has allowed to the estate of said Hill the sum of $10,230 55; as and for 4 years 8 months and sixteen days interest.
3. Because he has allowed to said estate of Hill for counsel fees $1,500.
4. Because he has allowed to Corcoran & Riggs four years, 8 months, & sixteen days interest, amounting to 8,470.
5. Because he has allowed to said Corcoran & Riggs counsel fees amounting to $1,000.
6. Because of other manifest errors apparent on the face of said account.

R. J. BRENT,
For Exceptants.

188 *Decree in general term, overruling exceptions to report of auditor, and confirming report.—Filed April 27, 1870.*

STEPHEN J. WILLIAMS, W'M J. HOPKINS, Albin P. Mann, John M. Bass, and J. Dick Hall *vs.* JOHN FREDERICK MAY, W'M W. CORCORAN, George W. Riggs, Hugh Caperton, Henry Oelrichs, Albertus C. Spain, Thomas H. Ellis, Robert Ould, William Wister, Peter Hollis, and Elisha Riggs, and WILLIAM W. CORCORAN AND ELISHA RIGGS *vs.* JOHN FREDERICK MAY AND HENRY OELRICHS.	Original bill 1274. Eq. doc. 9. Cross-bill.

This cause coming on to be further heard upon the bill, answer, and replication, and the cross-bill, answer, and replication, and the proofs, auditor's report, and the exceptions thereto, was argued by counsel, and the proceedings were read and considered; and thereupon it
189 is this 27th day of April, 1870, by the court ordered, adjudged, and decreed that the exceptions to the report of the auditor be, and they are, overruled, and the said report in all things confirmed.

And it is further ordered, adjudged, and decreed that the said defendant, John Frederick May, pay to the complainants, Stephen J. Williams, W'm J. Hopkins, Albin P. Mann, and J. Dick Hill, for the use of J. Dick Hill, the sum of $5,027 15 with interest thereon from the 1st day of May, 1868.

And that the defendant, Henry Oelrich, pay to the said complainants, Stephen J. Williams, William J. Hopkins, Albin P. Mann, and J. Dick Hill, for the use of J. Dick Hill, the sum of $5,030 81 with interest thereon from the 1st day of May, 1868.

And that the said defendant, John Frederick May, pay to the said complainants, William W. Corcoran and Elisha Riggs, the sum of $2,455 94 with interest thereon from the 1st day of May, A. D, 1868.

And that the said defendant, Henry Oelrichs, pay to the said
190 complainants, William W. Corcoran and Elisha Riggs, the sum of $2,019 26 with interest thereon from the 1st day of May, A. D. 1868.

And that the said defendants, May and Oelrichs, pay the costs of this suit, to be taxed by the clerk in the same proportions, and in the same manner as the sums hereinbefore decreed be paid.

By order of the court.

D. K. CARTTER,
Chief Justice.

Order for appeal to S. C. U. S.—Filed April 28, 1870.

STEPHEN J. WILLIAMS & OTHERS *vs.* JOHN FREDERICK MAY & OTHERS.	1274. Eq. doc. 9. Bill and cross-bill.

The defendants, May & Oelrichs, now come here, by their solicitors, and pray an appeal to the Supreme Court of the United States from the decree pronounced by this court yesterday, and the same is allowed.

191 *Stipulation of counsel as to appeal bond.—Filed April* 28, 1870.

WILLIAMS ET AL. *vs.* OELRICHS ET AL. } 1274. Eq. doc. 9.

Hugh Caperton, one of the defendants in this cause, being in no wise affected by the decree rendered, need not be joined in the bond given on appeal. No advantage will be taken in his non-joinder in the appeal and appeal bond.

P. PHILLIPS,
Sol'r Compl'ts.
JNO. D. McPHERSON,
Sol'r for Corcoran & Riggs.

WASHINGTON, 27 *April*, '70.

192 *Bond of appeal.—Filed May* 2, 1870, *at* 1.25 *p. m.*

Know all men by these presents that we, Henry Oelrichs, John F. May, Herman C. Von Post, and Gustav Schwab are held and firmly bound unto Stephen J. Williams, William J. Hopkins, Albin P. Man, John M. Bass, J. Dick Hill, William W. Corcoran, and George W. Riggs in the full sum of thirty thousand dollars, to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally. Dated this 28th day of April, 1870.

Whereas the above-bound Henry Oelrichs and John F. May, defendants in a certain cause and cross-cause in equity lately pending in the supreme court of the District of Columbia, wherein the above-named obligees were complainants, respectively, and the said Henry Oelrichs and John F. May were defendants, have prayed an appeal from a certain decree passed in said cause to the Supreme Court of the United States.

Now, the condition of this obligation is such, that if the said defendants shall well and truly prosecute their said appeal to effect,
193 and answer all damage and costs, if they fail to make their said appeal good, then the above obligation to be void; otherwise to remain in full force and virtue.

HENRY OELRICHS. [SEAL.]
[SEAL.]
H. C. VON POST. [SEAL.]
GUSTAV SCHWAB. [SEAL.]

Witnessed by—
J. P. LOWEGUE, as to signatures of H. Oelrichs, H. C. Von Post, & Gustav Swab only.

UNITED STATES OF AMERICA,
Southern District of New York,
City & County of New York, ss:

Gustav Schwab and Hermann C. Von Post, two of the subscribers to within obligation, being severally duly sworn, each for himself says that he is a householder or freeholder within the State of New York, and worth the sum of thirty thousand dollars over and above all his debts & liabilities, and exclusive of property exempt by law from execution.

GUSTAV SCHWAB.
H. C. VON POST.

Sworn before me this 28th day of April, 1870. Witness my hand & seal.

[L. S.]

JOHN M. WEED,
Notary Public, New York County.

194 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I hereby certify that I consider Hermann C. Von Post and Gustav Schwab, two of the obligors named in and who have executed the within bond, good and sufficient sureties for the amount of the penalty mentioned in said bond.

Dated New York, April 29, 1870.

SAM. BLATCHFORD,
Dist. Judge U. S., S. D. of N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that I am well acquainted with the handwriting of Samuel Blatchford, whose name is subscribed to the annexed bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, *he was* judge of the district court of the United States of America for the southern district of New York.

In testimony whereof I have hereunto subscribed my name
195 and affixed the seal of the said district court this 29th day of April, in the year of our Lord one thousand eight hundred and seventy, and of the independence of these United States the ninety-fourth.

The words George W. Morton erased, and George F. Betts substituted before signing.

[L. S.]

GEORGE F. BETTS, *Clerk.*

[5-c. stamp, cancelled.]

Approved by the court this 2d day of May, A. D. 1870.

D. K. CARTTER,
Ch'f Justice.

196 *Appeal bond No. 2.—Filed May 7th, 1870.*

Know all men by these presents that we, Henry Oelrichs, Hermon C. Von Post, and Gustav Schwab, are held and firmly bound unto Stephen J. Williams, William J. Hopkins, Albin P. Man, John M. Bass, J. Dick Hill, William W. Corcoran, and George W. Riggs in the full sum of thirty thousand dollars, to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally. Dated this 6th May, 1870.

Whereas the above-bound Henry Oelrichs and a certain John F. May are defendants in a certain cause and cross-cause in equity, lately pending in the supreme court of the District of Columbia, wherein the above-named obligees were complainants, respectively, and the said Henry Oelrichs and John F. May were defendants, have prayed an appeal from a certain decree passed in said cause to the Supreme Court of the United States.

Now, therefore, the condition of the above obligation is such that if the said defendants shall well and truly prosecute their said ap-
197 peal to effect, and answer all damages and costs if they fail to make their said appeal good, then the above obligation to be void; otherwise to remain in full force and virtue.

HENRY OELRICHS. [SEAL.]
H. C. VON POST. [SEAL.]
GUSTAV SCHWAB. [SEAL.]

Witnessed by—
JOHN W. WEED.

STATE OF NEW YORK,
City and County of New York :

On this sixth day of May, in the year, 1870, personally before me appeared Henry Oelrichs, Herman Von Post, & Gustav Schwab, known to me to be the individuals described in, and who executed, the foregoing instrument, and they severally acknowledged to me that they executed the same.

Witness my hand & seal.

{ J. W. W. }
{ L. S. }

JOHN W. WEED,
Notary Public, New York County.

198 UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss :

Gustav Schwab and Herman C. Von Post, two the subscribers to the within obligation, being severally duly sworn, each for himself says that he is a householder, or freeholder, within the State of New York and worth the sum of thirty thousand dollars over and above all his debts and liabilities, and exclusive of property exempted by law from execution.

H. C. VON POST.
GUSTAV SCHWAB.

Witness my hand & seal this 6th day of May, 1870.

JOHN W. WEED,
Notary Public, New York County.

UNITED STATES OF AMERICA,
State of New York, ss :

I hereby certify that I consider Herman C. Von Post and Gustav Schwab, two of the obligors named in, and who have executed, the within bond good & sufficient sureties for the amount of the penalty mentioned in said bond.

SAM'L BLATCHFORD,
Dist. Judge U. S. South'n Dist. of N. Y.

199 UNITED STATES OF AMERICA,
Southern District of New York, ss :

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that I am well acquainted with the handwriting of Samuel Blatchford, whose name is subscribed to the annexed bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same judge of the district court of the United States of America for the southern district of New York.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court this sixth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the independence of these United States the ninety-fourth.

The words George W. Morton erased & George F. Betts substituted before signing.

[L. S.] GEORGE F. BETTS,
Clerk.

[5-ct.stamp.]

The within bond is hereby approved this 7th day of May A. D. 1870.
By order of the court.

D. K. CARTTER,
Chf Justice.

200 *Clerk's certificate to record.*

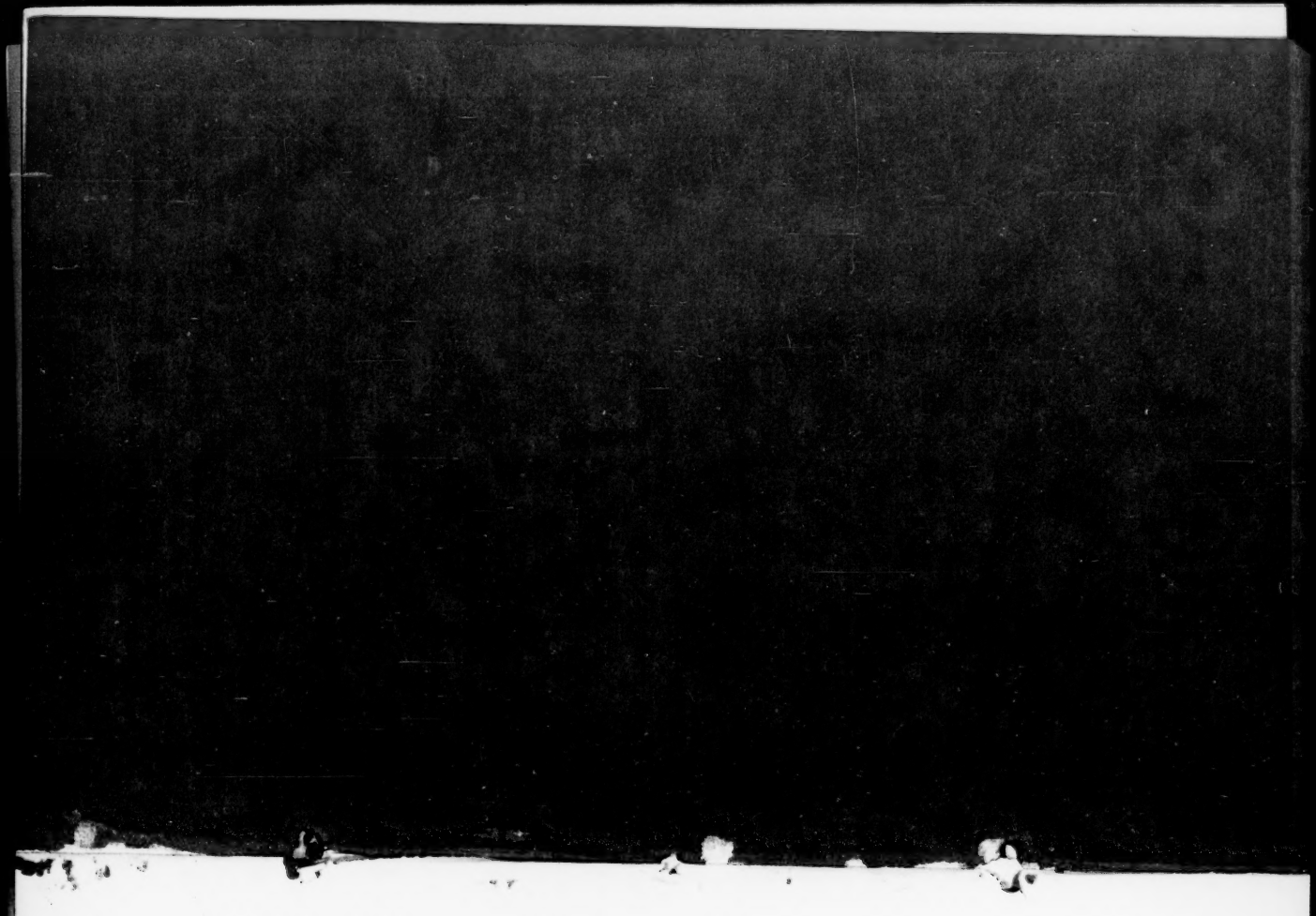
CLERK'S OFFICE, SUPREME COURT D. C.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Stephen J. Williams et al. vs. John Frederick May et al., 1274, eq. dock. 9.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 30th of November, 1870.

[SEAL.] R. J. MEIGS, *Clerk*

(Indorsement on cover:) No. 431. Henry Oelrichs and John Frederick May, appellants, vs. Stephen J. Williams, William J. Hopkins, et al. District of Columbia, supreme court. Filed 20th December, 1870.



Supreme Court of the United States.

HENRY OELREICHS AND JOHN FREDERICK MAY, APPELLANTS,
vs.
STEPHEN J. WILLIAMS, WILLIAM J. HOPKINS, ET AL.
No. 216.

Appeal from the Supreme Court of the District of Columbia.

Brief of Counsel of Appellants.

Henry Oelreichs and John F. May are appellants from a decree in equity rendered by the supreme court of the District of Columbia on the 27th of April, 1870.

See Rec., p. 68.

ABSTRACT OF THE PLEADINGS.

The bill of complainants filed on the 1st May, 1868, sets out that the complainants, Williams, Hopkins, and Man, are executors of William S. Wetmore; that the complainant Bass is the executor of H. R. W. Hill; that the complainant J. Dick Hill is the only heir of said H. R. W. Hill.

That on the 31st May, 1856, Albert C. Spain, as committee of Mary McRae, brought a suit in equity in the supreme court of the District of Columbia, charging that the abovenamed W. S. Wetmore held the legal title to certain certificates of indebtedness issued by the State of Texas, pay-

ment of which had been assumed by the United States, and which were then in the Treasury Department; and that Wetmore held the one-tenth part, viz., $81,772.08, as the property of James Hamilton, and to secure a debt due by Hamilton to Wetmore of $2,500.

That Wetmore also pretended to hold the said one-tenth to pay certain orders and assignments drawn by Hamilton on the fund, viz., one in favor of Corcoran & Riggs for about $30,000, one in favor of H. R. W. Hill, then deceased, for $58,000, and a claim in favor of Charles McAlister and others, trustees of the Bank of the United States, for $12,051.48.

Rec., pp. 1 and 2.

That in said bill Spain set up an assignment made by Hamilton to him, and claimed that it entitled him to a priority and to an injunction against Wetmore, his assignees, aiders, and abettors, restraining them from receiving from the United States the said one-tenth, or $81,772.08.

See Rec., p. 2, top.

That Spain obtained the injunction prayed for in his bill by furnishing a bond in the sum of fifteen thousand dollars, signed by John Frederick May and Henry May as sureties, on 31st May, 1856.

See Rec., p. 3.

That answers were filed to Spain's bill by John M. Bass, executor of H. R. W. Hill, and by J. Dick Hill, in his own right, claiming to be paid out of the fund in the United States Treasury which had been injoined, and that Corcoran & Riggs and the others also answered.

See Rec., p. 3.

That Spain, having been required on the 24th of March,

1859, to give further security for his injunction, furnished another bond on 23d April, 1859, in the penalty of $20,000.

See Rec., p. 3, foot.

That the case was heard on Spain's bill and an agreed statement of facts, and the supreme court of the District of Columbia thereupon passed a decree that Wetmore was, from 16th September, 1850, the holder of the legal title to the certificates, payment of which Spain had enjoined, and held one-tenth of the fund as trustee to pay Hamilton's assignments or drafts upon him; and the decree also settled that there was due to Wetmore $4,333.66, to Corcoran & Riggs $30,000, and as the $34,333.66 in the Treasury was found to be $72,505.12, there was left a balance of $38,171.46. But the decree also awarded to Hill's representatives the sum of $52,457, and these were consequently short paid $14,285.54—difference between Hill's award and balance. The injunction was dissolved.

See Rec., pp. 4 and 5.

That on this decree Corcoran & Riggs were paid the amount awarded to them, and J. Dick Hill was paid $38,171—leaving still due him $14,285.54.

See Rec., p. 5.

The complainants aver that by reason of the injunction described in their bill they have been damaged by the loss of principal and interest, which would have been received but for said injunction, with costs and counsel fees, less $2,500 received from Pierce Butler.

See Rec., p. 7.

The complainants, Williams, Hopkins, and Man, representatives of Wetmore, claim to recover for the benefit of Hill the damage of said fund, as held by Wetmore in trust, by reason of said injunction.

See Rec., p. 8, top.

Hill maintains he is entitled in his own right to recover on the bond, but for greater certainty invokes the aid of the other complainants in the bill.

See Rec., p. 8.

The bill prays that the amount due Hill may be ascertained, a decree for payment, that the several sureties be marshalled, and the order of apportionment and contribution established, &c.

See Rec., p. 8, foot.

The exhibits annexed to the bill are:

A. Order of injunction and injunction bond, in which Spain, as principal, and John F. May and Henry May, as sureties, are bound unto James Hamilton and the other parties therein named in the sum of fifteen thousand dollars.

See Rec., p. 9.

Writ of injunction restraining Wetmore and the others from asking for, demanding, or receiving the sums of money specified as coming to them upon any bonds or certificates filed with the Secretary of the Treasury, &c.

See Rec., p. 10.

B. Order for additional bond, it having appeared to the satisfaction of the court that the former bond was not sufficient.

See Rec., p. 11.

Second injunction bond, of the same tenor and effect with the other, but in the sum of $20,000, with Oelreichs.

See Rec., pp. 11 and 12.

Substituted by consent for the first bond, with reservation of rights of obligees in the bond to have recourse to the

original bond filed by Spain for interest accrued up to time of change.

See Rec., p. 12.

C. Bond and injunction of the James River and Kanawha Company.

See Rec., pp. 12 to 14.

D. Bond of Pierce Butler.

See Rec., pp. 14 and 15.

E. Agreement of parties raising injunction as to executors of Halford and others.

See Rec., pp. 15 and 16.

To the original bill of complaint of Stephen J. Williams and others, Oelreichs and May answered on the 22d October, 1868.

The answer admits that the suit in equity was commenced by Spain as stated, and that the respondents signed the injunction bonds.

It avers that at the date of the filing of Spain's bill, and of the injunction bond first given, and of service and return thereof, the writ of injunction did not operate on or affect any bonds, certificates, or choses in action filed with the Secretary of the Treasury, in which the late H. R. W. Hill, or his representatives, had any title or interest.

It avers that if the said Hill or his representatives ever had any interest in said bonds or certificates, it arose long after said injunction was returned, and the injunction bonds given in behalf of Spain are not liable in the premises.

See Rec., p. 22, foot.

The answer avers that neither Wetmore nor Hamilton, nor their assignees, had any right to the certificates of indebtedness or bonds described in the bill. It avers that the

Bank of the United States, being at one time indebted to Wetmore, in order to secure him, hypothecated to him 378 bonds issued by the State of Texas, for £250 each, which Wetmore deposited with the State of Texas, and received in lieu thereof three certificates of debt, bearing interest at ten per cent., and amounting to $506,393, being the same mentioned in the bill; that while the certificates were then in pledge to Wetmore, the United States Bank proposed to James Hamilton to give him a contingent reward of ten per cent. if he would procure recognition and payment of the certificates. (See Rec., p. 23, foot, and see the letter of the U. S. Bank to Hamilton, dated 16th October, 1845.)

See Rec., pp. 28 and 29.

This agreement of the Bank with Hamilton was to continue only to the 20th of March, 1846, or, with the concurrence of Wetmore, for two years, from 16th October, 1845; beyond that limit the bank was not to be bound, (October, 1847.)

See Rec., p. 28, foot; and 29, top.

The answer avers that the two years specified have elapsed without anything having been effected by Hamilton, and Texas being admitted into the Union with an assumption of this debt by the United States, the Bank determined to allow Hamilton the compensation originally agreed upon, and the trustees of the Bank instructed Wetmore to that effect.

See Rec., p. 24, and also the letter of the bank to Wetmore, Rec., pp. 29 and 30.

Further, that the Bank paid Wetmore in full and received back the certificates with an assignment of nine-tenths of the interest thereon, Wetmore retaining one-tenth to pay Hamilton, as provided in the letter of the Bank above set forth; but that in fact the said certificates were not among the debts

assumed by Congress, and therefore that the consideration on which the Bank made the promise had entirely failed.

See Rec., p. 24.

Further, that at the time of the injunction in Spain's suit, Hamilton, by reason of his non-performance of his contract with the Bank and his fraudulent misrepresentations, was not entitled to any part of the certificates, nor were Wetmore, nor Corcoran & Riggs, nor Hill, as assignees of Hamilton; and that neither of the injunction bonds is chargeable, since no damage flowed from the writ of injunction.

See Rec., p. 25, top.

Further, that it appears on the face of the agreement between the Bank and Hamilton that the object was to use personal and secret influence on the legislators to influence legislation, and hence neither Hamilton nor his assignees could acquire any interest maintainable in law under such an agreement.

See Rec., p. 25.

Further, that during the pendency of Spain's suit a compromise was entered into between him and the Bank, by which, on his releasing all claim on a sum of $12,051.40, a part of the tenth of the whole sum claimed by him, the Bank gave up all their claim to the rest of the tenth, released all recourse on the injunction bond, and withdrew from the controversy; without which neither Wetmore nor any of the other parties could have realized any part of their claim.

See Rec., p. 25.

The answer denies that the injunction bonds were given as security to parties who might be beneficially interested,

and avers they were solely for the security of the obligees named in them.

See Rec., p. 26.

Further, that no process was ever prayed for in the bill of Spain against Hill, and none ever had against him or his representatives; and that no injunction was ever issued against Corcoran & Riggs.

See Rec., p. 26, foot.

Further, that in 1859 there was an agreement between the Bank and Spain, to which Wetmore and Corcoran & Riggs assented, and by which a decree was passed dissolving the injunction as to the *pro rata* on the sum of $12,500; part of the $81,000, and the Bank, with the assent of the other parties, releasing Spain and the sureties on the injunction bond, which it is averred operated an entire release of the sureties from all liability.

See Rec., p. 27.

That after the second injunction bond was given, Halford, Lamar, and Cuyler moved therein, with the assent of Wetmore and Corcoran & Riggs, compromised with Spain, and removed all claim on the injunction bonds, and that such release, with the assent of the other obligees, discharged the bonds.

See Rec., p. 27.

Elisha Riggs answered the bill separately, admitting he received one-fourth of $5,000 paid by the James River and Kanawha Canal Company, on account of damages and costs, occasioned by the injunction sued out by that company. He avers that by reason of the injunction set out in the bill, he and his partner, W. W. Corcoran, sustained damage largely in excess of the amount received from the James River and Kanawha Canal Co.

See Rec., pp. 31 and 32.

The separate answer of W. W. Corcoran to the original bill was of the same effect as the answer of E. Riggs, but averred further that the complainants were entitled to no priority of payment over Corcoran & Riggs, as obligees in the injunction bonds given by Spain, and claim to have the residue of the costs and damage of Corcoran & Riggs paid out of said bonds; for which they filed a cross-bill.

See Rec., pp. 21 and 22.

Replication to the answer of May, Oelreichs, and the others was filed on the 2d November, 1868.

See Rec., p. 32.

W. W. Corcoran and Elisha Riggs filed a cross-bill against the complainants and defendants in the case to recover the damages and costs sustained by them in the premises. The averments of the bill are substantially the same as those already stated.

See Rec., pp. 16 to 20.

It was agreed, January 26, 1869, that the answer of the defendants May and Oelreichs to the bill of complaint should be taken as an answer to the cross-bill, and the same with regard to the allegations of complainants' bill.

See Rec., p. 35.

The Evidence.

The evidence adduced by the complainants consisted of—

1. The deposition of W. H. Jones, an officer of the U. S. Treasury Department, who deposes that he was concerned in settling the claim of William S. Wetmore as a creditor of Texas, under the act of 1855; that on the 4th April, 1856, W. S. Wetmore and others filed three certificates of Texas indebtedness, amounting in all to $506,393; on the 3d June, 1856, a *pro rata* allowance of $76,895 was re-

ported for payment, $\frac{9}{14}$ of which was paid to Wetmore's associates; but because of an injunction filed by Albertus C. Spain, the remaining one-tenth was not paid to Wetmore at that time.

That on the 3d March, 1859, out of the remaining tenth, $12,451.48 was paid by consent of Wetmore to S. Jaudan, J. A. Bayard, C. Fallon, and Wm. B. Reed.

That on the 20th March, 1861, the U. S. circuit court of the District of Columbia dissolved the injunction, and the remainder of the tenth, $69,720.60, was paid to W. W. Corcoran, attorney in fact of Wm. S. Wetmore, and in drafts in favor of the following persons, viz: to W. S. Wetmore, $4,333.66; W. W. Corcoran, $30,000; to P. Phillips, attorney of J. D. Hill, $35,386.

See Rec., pp. 33 and 34.

This was the only oral testimony submitted on behalf of complainants.

There were agreements made by the parties as to various facts which were admitted, viz., (See Rec., pp. 35 and 36:)

1. That the complainants, Williams, Hopkins, and Mann, were the legal representatives of W. S. Wetmore; that Bass was the executor of H. R. W. Hill, and that J. D. Hill was the only heir of the latter.

2. That the bill of Pierce Butler was agreed to be taken as an answer to Spain's bill, and the answer of all the defendants in the latter case were taken as cross-bills.

N. B.—The bill of Pierce Butler alluded to was in the case of Albertus C. Spain, committee of Mary M. McRae, complainant and appellant, *vs.* Robert J. Brent, administrator of James Hamilton *et al.*, reported in 1 Wallace, p. 604, and Butler's bill may be found in the transcript of the record of that case at p. 124.

And the answers to Spain's bill referred to in the above

clause of the agreement are to be found in the transcript of the record above named of Spain *vs.* Brent, administrator of Hamilton, viz :

The answer of James Hamilton at p. 16.
The answer of G. B. Lamar at p. 21.
The answer of the Bank U. States at p. 28.
The answer of Robert J. Brent, adm., at p. 34.
The answer of J. D. Hill at p. 64.
The answer of J. W. Bass at p. 69.
The answer of Corcoran & Riggs at p. 71.
The answer of W. S. Wetmore at p. 83.

3. That the bill of the James River and Kanawha Canal Company was dismissed on the 11th May, 1861, and the injunction was dissolved on the 9th May, 1859.

See agreement marked Exhibit E, on pp. 15 and 16 of the transcript of the case at bar.

4. That the answer of Bass, as executor of H. R. W. Hill, to the bill of the James River and Kanawha Canal Company, filed on , was by agreement considered filed in Spain's case on 9th September, 1860.

See the said answer of Bass at p. 69 of the transcript of record in Albertus C. Spain, committee, *vs.* Robert J. Brent, adm. of Hamilton, p. 69, reported in 1 Wallace, p. 604.

That the statement of P. Phillips, that $1,500 of his fee charged to executor of Hill was for the injunction proceedings, should be received as if regularly taken by deposition.

See the statement of P. Phillips, Rec., p. 55, middle.

6. That the answer of the trustees of the Bank in Spain's case is to be received as evidence, as if the evidence had been regularly taken by deposition.

See Rec., p. 36

N. B.—The answer of the Bank of the United States referred to is to be found at p. 28 of the transcript of the record in the case of Albertus C. Spain, committee, *vs.* Robert J. Brent, adm. of Hamilton, reported in 1 Wallace, p. 604.

The facts alleged by that answer are, that the whole of the funds in the U. S. Treasury allowed on the claims upon Texas filed by W. S. Wetmore belonged to them, the U. S. Bank trustees; and that neither Wm. S. Wetmore nor James Hamilton, nor any assignee of either of them, had any right to said funds.

That the trustees of the Bank of the United States were the owners of 378 bonds, of £250 each, and one of £10,126 13*s.* 4*d.*, issued by the State of Texas; and that as the Bank was indebted in a large sum to W. S. Wetmore, the Bank, to secure the amount, hypothecated said bonds to him.

That Wetmore committed the bonds to Texas, and received in exchange certificates of indebtedness, viz:

No.	*For.*
1,051	$457,380
1,038	48,913
1,231	100
In all	$506,393

That while these certificates were in the possession of Wetmore, James Hamilton made such representations to the trustees of the Bank in the year 1845, that he could be of great service in securing payment of the certificates if they would confide to him the management of the claim; and the Bank trustees did give Hamilton authority in a letter they addressed to him, agreeing to pay Hamilton ten per cent. of whatever sum he might procure to be paid to them on said certificates over and above the amount they owed Wetmore; but Hamilton's authority was not to extend beyond 16th October, 1847.

That the sum they owed Wetmore was $120,514.84, and the ten per cent. was to be calculated on the difference between that sum and the amount which Hamilton might recover.

That the two years limited by the agreement expired without Hamilton's having procured any result beneficial to the Bank.

That in 1850 Congress assumed the payment of certain debts of Texas, and Hamilton then assured them that the debt due them, *i. e.*, the Bank, had been placed on the list of those to be paid by reason of his instrumentality, whereupon they agreed to allow him the compensation stipulated in the former agreement, and as the certificates were still in Wetmore's possession under the mortgage they addressed a letter to Wetmore to that effect.

That they paid Wetmore in full afterwards, and received back from him the said certificates and an assignment of nine-tenths of the interest thereon, reserving the other tenth to meet any claim which might be set up by Hamilton in consequence of their (the Bank's) letter to him, Wetmore.

That, in truth, the said certificates were not provided for and paid under the act of Congress, and that the whole consideration on which they were induced to make the promise to Hamilton failed.

And that said Hamilton and his assignees cannot have any interest in the fund.

See pp. 28 to 30 of the transcript in Spain, committee, *vs.* Brent, administrator of Hamilton, 1 Wallace, 604.

7. That the exhibits to the answer in this case, with Wetmore's acceptance thereon, testify the true agreement with Hamilton.

N. B.—The exhibits referred to are as follows, (see Rec., pp. 28 and 29,) filed with answer of Oelreichs and May:

Exhibit A is a letter from trustees, Bank United States, to Hamilton, dated October 16, 1845, accepting an offer made them by Hamilton to prosecute their claims against the government of Texas. The claims of the Bank are described as bonds and securities of Texas pledged by the Bank to Wetmore, and then in his hands. Hamilton is promised a contingent compensation of ten per cent. on such amounts as may be recovered over and above the amount due Wetmore. The limitation of time of the agreement is to the 20th March, 1846; but the Bank is willing, with the concurrence of Wetmore, to extend the time to 16th October, 1847.

See Rec. pp. 28 and 29.

Exhibit B, filed with answer of Oelreichs and May, is a letter of the bank to W. S. Wetmore, dated September 16, 1850. This letter describes the agreement of the Bank with Hamilton; refers to the act of Congress assuming to pay certain bonds and certificates of Texas, among which, as the Bank is informed by Hamilton, are included the bonds the Bank held. The Bank then requests Wetmore, that if they, the trustees of the Bank, should not have previously redeemed the bonds, that upon the payment of the bonds to him he should retain, subject to the order of Hamilton, one-tenth of any sum over and above his (Wetmore's) claim against the bonds.

At the foot of this, Wetmore agreed to follow the instructions of the Bank, and to retain one tenth of the money to be received on the securities mentioned in the letter of the Bank, subject to the condition of the above order, and to a lien of $2,500 for money lent by him to Hamilton.

See Rec., pp. 29 and 30.

It was further agreed by the parties to this cause, (see p. 36.)

1. That Wetmore's answer to Spain's bill should be received as evidence taken by depositions.

N. B.—The said answer is found at page 83 of the Record of the case of Albertus C. Spain, committee of Mary McRae, complainant and appellant, *vs.* Robert J. Brent, administrator of James Hamilton and others, reported 1 Wallace, p. 604.

This answer avers that Wetmore is personally interested in the matter of Spain's bill to the extent of $2,500, loaned by him to Hamilton on the security of the fund in controversy; and for the remainder he stands only as trustee and stakeholder.

That on or about the 9th of December, 1842, the debt of the Republic of Texas to the Bank of the United States, with the securities therefor, was pledged to Wetmore, to secure payment, with interest, of a loan by him to the Bank of fifty thousand pounds sterling, reduced by payments to $55,493.-24. These Texas securities were then delivered to him, and the same, or the substitute for them, always remained in his possession until deposited by him in the Treasury of the United States.

That the substituted securities were issued to Wetmore alone, who alone was entitled to receive them.

That the legal title to the fund was always in Wetmore.

That as to nine-tenths of the debt, Wetmore's equitable interest depended on the loan made by him to the Bank of the United States, and on the satisfaction thereof was extinguished.

But while Wetmore's legal title and possession of the securities continued, and before his loan to the Bank had been paid, the Bank addressed him a letter on 16th September, 1850, annexed to Wetmore's answer as Exhibit C,

(and is the same as described above as Exhibit B on this brief, p. 14.)

That at the date of said Exhibit C, Wetmore did not know or believe that any other person than Wetmore himself had any interest under Hamilton in said tenth.

That before the receipt of said Exhibit C, Hamilton had assigned to Wetmore all his interest in said tenth to secure a loan of $2,500.

That the first intimation Wetmore ever received that the James River and Kanawha Canal Company claimed any interest in the said one-tenth was in a letter received on the 10th May, 1856, from Thomas H. Ellis, the president of said company.

That shortly after Wetmore's loan to Hamilton, and the order of the trustees of the Bank of the United States, Wetmore received a written order from Hamilton, dated the 21st September, 1850, to pay out of said tenth to Corcoran & Riggs thirty thousand dollars, which order Wetmore accepted.

That on the 24th March, 1851, Wetmore received a further order from Hamilton, directing him to hold the remainder of the one-tenth subject to the order of Corcoran & Riggs.

That on the —th day of May, 1851, Wetmore received notice of an assignment from Hamilton to James Robb & Co., and a letter from Corcoran & Riggs, dated 10th May, 1851, notifying him, Wetmore, that they relinquished all claim upon the fund in question, over and above the draft for $30,000 in favor of James Robb & Co.

That on 6th June, 1853, Wetmore received a letter from James Robb & Co., whereby it would appear they had assigned all their interest in the fund to H. R. W. Hill.

That on or about 31st May, 1856, Wetmore received notice of the claim of Pierce Butler, whereby it would appear

that he had as early as June, 1850—before all others—an order of assignment from Hamilton to the trustees of the United States Bank for $5,000.

That as to the claim of Albertus C. Spain, committee, Wetmore never heard of it until the bill of said Spain was filed.

See Rec., pp. 83 to 89 of the record in the case of A. C. Spain, committee of Mary M. McRae, *vs.* Robert J. Brent, admr. of Hamilton, reported in 1 Wallace, p. 604.

2. That all the statements contained in the agreement and supplement thereto, including Wetmore's affidavit, in which Spain's bill was tried, may be received in like manner, *i. e.*, as evidence taken by deposition.

N. B.—The agreement and supplement thereto referred to are found in the Record of Spain, committee of McRae, *vs.* Brent, administrator of Hamilton, at p. 32 *et seq.*

In Spain *vs.* Halford's administrator it is argued that the Holfords were named executors in their father's will, and qualified as such in England; that they filed a copy in New York, and qualified as administrators there, and not elsewhere, &c.

In Spain *vs.* James Hamilton *et al.*, it was agreed that a decree be entered dissolving the injunction against the Bank of the United States as to *a pro rata* on $12,500 claimed by Hamilton, and that said sum be paid to the Bank; and the Bank releases the injunction bond of Spain and his sureties from all responsibility.

3. That the sale of Hamilton to Hill on 27th May, 1853, found in the record in the Supreme Court in the case of Spain *vs.* Brent *et al.*, p. 90, as also the proceedings filed February, 1853, by James Robb & Co. *vs.* James Hamilton, and found in the same record, p. 101, be admitted as duly proved.

N. B.—The sale referred to, from Hamilton to Hill, was made at New Orleans, La., on the 27th May, 1853, and in a conveyance by Hamilton to H. R. W. Hill of all his rights to the fund in the fund to be collected by Wetmore from the certificates of indebtedness pledged to Wetmore by the Bank of the United States, as is shown by the letter of 16th December, 1850.

See Rec., pp. 29 and 30.

It is stated in the act that the original order and acceptance by Wetmore had previously been pledged to James Robb & Co. on the 20th April, 1851, to secure the payment of $58,500 due them by Hamilton.

The consideration expressed for the conveyance to Hill was payment by him to Hamilton of $33,000.

See Rec. of Spain, committee, *vs.* Brent, administrator of Hamilton, pp. 90 and 91.

N. B.—"The proceedings filed by James Robb & Co. *vs.* James Hamilton" are the record of a suit in the second district court of New Orleans, commenced 28th February, 1853, wherein James Robb & Co. were plaintiffs and James Hamilton defendant, in which judgment was rendered against Hamilton on the 27th April, 1853, for $33,500 and interest.

See Rec. of Spain, committee, *vs.* Brent, administrator of Hamilton, pp. 101 to 104.

4. It is admitted that McAlister, Randall, Jaudan, Bayard, Fallon, Reed, Henry S. Halford, Frederick S. Halford, Lamar, and Cuyler, named in the several injunction bonds as obligees, have no interest therein by reason of their release.

See Rec., p. 36.

5. The exhibits annexed to complainants' bill are to be taken as proved.

N. B.—The exhibits alluded to are:

A. Order for an injunction in Spain *vs.* Hamilton and others.

The injunction bond in same, signed by John Fred. May and Henry May, as sureties, in the sum of $15,000.

The writ of injunction in same case.

See Rec., pp. 9 to 11.

B. Order for additional injunction bond in same case.

Second injunction bond in said case with Henry Oelreichs, as surety, in the sum of $20,000.

This second bond is taken in lieu of the first one, with the right reserved to the obligees to have recourse upon the first for interest accrued theretofore, and not otherwise.

See Rec., pp. 11 and 12.

C. Bond for injunction of Thomas H. Ellis, president of James River and Kanawha Canal Company, for $5,000, with Hugh Caperton and Robert Ould as sureties, and writ.

See Rec., pp. 12 and 13.

D. Injunction bond of Pierce Butler, with Sidney Webster and C. and J. Chubb, as sureties, in the sum of $2,500.

See Rec., pp. 14 and 15.

E. Is an agreement showing that the injunction in the case of A. C. Spain *vs.* Holfords, executors, Lamar, Brent, and Hamilton, to restrain them from receiving $39,856.60 from the Treasury, is dissolved.

And that on the receipt of the money from the Treasury, the injunction bonds given by A. C. Spain, so far as the same to the use of said named parties respectively, be released.

See Rec., pp. 15 and 16.

W. Hemphill Jones was examined on the part of the defendants.

He deposes that the three certificates of the debt of Texas were paid at the United States Treasury, viz:

To McAlister, Randall, Fallon & Reed.....	$735,948 80
To Jaudan, Bayard, Fallon, and Reed.....	12,051 48
To W. W. Corcoran, att'y of W. S. Wetmore.	69,720 60
In all.....	$817,720 88

That it was the practice of the Department to require releases to be filed prior to payment, but does not know whether such releases were filed by Corcoran & Riggs, the representatives of H. R. W. Hill and James Hamilton. Knows of no instance in which such releases were dispensed with.

See Rec., pp. 37 and 38.

He further states as to the payments under the acts of Congress of September 9, 1850, and February 28, 1855; that the Secretary of the Treasury gave public notice as required by law; that Spain filed copy of writ of injunction, restraining payment of certificates, 2d June, 1856, and the Secretary ordered it to be respected; that the Bank of the United States, on 29th of April, 1856, was paid $12,051.48, part of one-tenth due on said certificates; does not know whether releases were filed; supposes there was no departure from the usage of requiring releases; that payment of the nine-tenths due on the certificates was made on settlement No. 168, and the one-tenth would have been paid at the same time but for the injunction; that on the 24th March, 1861, on the dissolution of the injunction in Spain *vs.* Hamilton, administrator, $69,720 were paid to W. W. Corcoran.

See Rec., pp. 39 and 40.

By a stipulation of December 31, 1869, (see Rec., p. 40.) it is agreed:

1. That the report of the Secretary of the Treasury and opinion of the Attorney-General on the act of 1850 may be offered in evidence.

N. B.—It does not seem certain that they were read in evidence.

The opinion of the Attorney-General referred to may be found in vol. 6, Attorney-Generals' Opinion, p. 130.

2. That among the papers filed in the Treasury Department, relating to Wetmore's claim, there is a release filed before payment by Wetmore and Corcoran & Riggs, but no release is found on file by the representatives of Hill or by James Hamilton.

3. The preliminary and final decrees, together with auditor's report and exceptions thereto, filed in Spain's case, to be evidence in this case.

N. B.—The preliminary decree is to be found on pp. 135 and 136 of the record of Spain, committee of McRae, *vs.* Brent, administrator of Hamilton.

It decrees that under the agreement between the United States Bank and Hamilton, of 16th October, 1845, he had no lien for his commission on the Texas bonds then in the hands of Wetmore; his claim was only a personal one on the Bank; that the legal title of the fund was always in Wetmore, and was not conveyed to the Bank; that from the 16th September, 1850, Wetmore was trustee of the fund to pay Hamilton's debts in the order in which they were notified to him; the auditor of the court is therefore directed to allow Wetmore's claim of $2,500, with interest; to allow Corcoran & Riggs, $25,000 with interest, and to allow the representatives of Hill, assignee of Robb & Co., $33,500, with interest, preferring their creditors in the order thus suggested.

The auditor's report (same Rec., p. 137) is made in accordance.

The exceptions to it of Spain's counsel are on p. 138: 1st, because Spain's claim was totally disallowed; and, 2d, because he had allowed those of Wetmore, Corcoran & Riggs, and Hill.

Wetmore excepted to the report, because he was not allowed interest and commissions, and because he was not allowed his expenses, counsel fees, &c.

The defendants, Corcoran & Riggs, Wetmore, *et al.*, excepted, because they were only allowed $30,000 instead of $40,533.33.

The final decree, rendered on the 19th February, 1861, overruled all the exceptions, confirming the auditor's report as it stood, dissolved the injunction, and decrees to the parties the sums mentioned in the auditor's report.

See page 139, transcript of record in A. C. Spain, committee, *vs.* Brent, adm. of Hamilton.

This judgment was confirmed in the Supreme Court.
See 1 Wallace, p. 604.

On the evidence of which the foregoing pages are an abstract, the supreme court of the District of Columbia, on the 27th April, 1870, passed a decree that the defendant, John Frederick May, pay to the complainants, Stephen J. Williams, William J. Hopkins, Albin P. Mann, and J. Dick Hill, for the use of J. Dick Hill, the sum of $5,027.15, with interest from the 1st day of May, 1868.

That the said defendant, John Frederick May, pay to the complainants, William W. Corcoran and Elisha Riggs, the sum of $2,455.94, with interest thereon from the 1st of May, 1868.

That the defendant, Henry Oelreichs, pay to the complainants, Williams, Hopkins, Mann, and Hill, $5,030.81, with interest from the 1st day of May, 1868.

That the defendant, Jno. Frederick May, pay to the complainants, Corcoran & Riggs, $2,455.94, with interest from 1st of May, 1868.

That the defendant, Henry Oelreichs, pay to Corcoran & Riggs $2,019.26, with interest from 1st May, 1868.

And that May and Oelreichs pay the costs in the same proportion.

See Rec., p. 68.

From this decree May and Oelreichs appeal.

It was further agreed that the letters of the Secretary of the Treasury on pp. 40 to 43 of the Record should be read in evidence.

See Rec., p. 40.

The counsel of appellants submit the following

POINTS AND AUTHORITIES.

First. The court is without jurisdiction of the action, since "a plain, adequate, and complete remedy could have been had at law."

Sec. 16, act of 24th Sept., 1789, 1 Stat. at Large, p. 82.
Watson *vs.* Sutherland, 5 Wallace, p. 74.

"It is not incident to the general powers of a court of equity to proceed against the principals and sureties on such a bond"—one for temporary injunction—"and enforce payment of the damages secured by its condition by a decree." (Merryfield *vs.* Jones, 2 Curtis, p. 306.) "The objection that a suit on a bond is, in its nature, a suit at the common law, and so that a right of trial by jury is conferred by the seventh amendment of the Constitution," is fatal to the jurisdiction in this case of the equity side of the supreme court of the District of Columbia.

"A court, proceeding according to the rules of equity,

cannot give a judgment against the obligors in an injunction bond when it dissolves the injunction. It merely orders the dissolution, leaving the obligee to proceed at law against the sureties, if he sustains damage by the delay occasioned by the injunction."

See Bien *vs.* Heath, 12 Howard, 179.

Robinson *vs.* Campbell, 3 Wheaton, pp. 221 and 222.

Bennett *vs.* Butterworth, 11 Howard, pp. 674 and 675.

Teague *vs.* Denby, 2 McChord, p. 209.

Second. But if the court below had jurisdiction, still the decree rendered is erroneous.

The decree is, in part, in favor of Hill's estate, but no injunction ever issued against him, and the injunction bonds are not in his favor.

The bill filed by Spain did not pray for a subpœna against Hill's estate, for his administrator was unknown.

See the conclusion of the prayer of the bill, Record, p. 50.

It did not pray for an injunction against said administrator for the same reason.

See the prayer for injunction in Spain's bill, Rec., pp. 49 and 50.

There was no order of injunction against Hill's estate.

See Exhibit A, Rec., p. 9.

The injunction bonds were not made in favor of Hill's estate.

See the bond, Exhibit A, Rec., pp. 9 and 10, and Exhibit B, Rec., pp. 11 and 12.

Thus the administrator of Hill's estate is not named in

the bill as a defendant, nor in the order of injunction, nor in the writ of injunction, nor in the injunction bonds, and no injunction was asked against Hill's estate.

In what way, under these facts, can the sureties on the injunction bonds be made liable to Hill's estate?

"The contract of suretyship or guarantee being '*Stricti juris*,' or as some persons describe it, '*Strictissimi juris*,' the principle is, '*ut non duret vel extendatur de re ad rem*, DE PERSONA AD PERSONAM, *de tempore ad tempus*.' It has therefore to be examined with reference to the subject or amount for which the surety makes himself liable, *the person to whom and for whom* he engages to be liable, and the time during which he engages to continue liable. In the construction of the contract, this principle is adopted in its fullest extent, and is illustrated by the decisions of English tribunals, as well as by the texts and decisions of jurists and judicial tribunals in different States of Europe and America."

See Burge's Commentaries on the Law of Suretyship, p. 46.

"Nothing can be clearer, both upon principle and authority, than the doctrine that the liability of a surety is not to be extended by implication beyond the terms of his contract. To the extent, and in the manner, and under the circumstances pointed out in his obligation, he is bound, and no further."

See Miller *vs.* Stewart, 9 Wheaton, 703.

"It would be against the well-established rule of the chancery court to extend the liability of the surety, by any equitable construction, beyond the terms of his contract."

See Bien *vs.* Heath, 12 Howard, 179.

A case analogous to the one at bar, Eakle *vs.* Smith, 27 Maryland Reports, p. 467 *et seq.*

When the appellants here became sureties on the injunction bonds, they found there no such name as Hill, his estate, or administrator; they could not have had any intention of binding themselves to Hill, and what was not in their minds, was not in their contract.

Third. It is contended by the appellees that as the injunction bonds are made in favor of James Hamilton, William S. Wetmore, *et al.*, and *their assignees*, that Hill's estate is to be considered as included within the meaning of that term; but this is clearly an error. The evidence shows that Hill was the assignee of Hamilton, not of Wetmore, and it would be an unauthorized extension of liability to include any other than strictly the assignees of Wetmore.

The bill of Spain sought to make all of Hamilton's assignees parties, as well as Wetmore, showing the understanding and meaning at the time that Wetmore was a party for his interest as assignee of Hamilton only, viz, $2,500 or thereabouts, (see Spain's bill, Rec., p. 44, *middle;*) and the injunction bound Wetmore only for his individual claim, and the other assignees of Hamilton, who were claiming through Wetmore; but it did not bind Hill's estate because the administrator was unknown, and could not be and was not subjected to the bill of Spain.

The Secretary of the Treasury refused to consider the receipt of Wetmore as a sufficient acquittance for sums due Hamilton's assignees, and expressly demands the release of each claimant, Hill's representatives included.

See Rec., pp. 41 and 42.

Nothing was further from the minds of the parties at the time than to consider these bonds to Wetmore as intended to secure Hill's claim on Wetmore as stakeholder.

Fourth. The injunction of Spain caused no damage either to complainant or to Corcoran & Riggs, who filed a cross-bill.

The theory of complainants' bill is that Hill's administrator could have received a certain amount on the 31st May, 1856, but was prevented by our injunction; hence that he is entitled to interest from the said 31st May, 1856, until 19th February, 1861, date of the dissolution of our injunction.

The principle will not be denied that unless Hill had then a vested interest which was suspended by the injunction he can have no claim for damages.

Hill at that time had no such right, and did not have any until 17th February, 1859.

Claiming the fund as assignee of Hamilton, Hill had no other title than such as Hamilton possessed.

The assignment made by Hamilton to Hill was on 27th May, 1853. (See transcript in Spain, committee, *vs.* Brent, pp. 90 and 91.) And at that time Hamilton had no interest in the fund, because the agreement of the Bank of September 16, 1850, expressed in the letter of that date to Wetmore, (see Rec., Spain, com., *vs.* Brent, pp. 38 and 39,) was made upon false and fraudulent representations to them of said Hamilton that the certificates in the hands of Wetmore were among the debts of Texas assumed by the United States, when in fact they were not so, (see the answer of the Bank of the United States in the record of Spain, committee, *vs.* Brent, adm., p. 30,) and this answer is by the stipulation of parties received as evidence.

See Rec., p. 36, near the top.

To show that the assertions made to the Bank by Hamilton were untrue, we submit the following analysis of the act of 9th September, 1850, and the supplemental acts of Congress.

The act of September 9, 1859, ch. 49, (9 Stat., p. 446,) enacts as follows, viz:

By section 3d Texas releases United States from all claim for her debts, and for compensation or indemnity for surrender of ships, forts, custom-houses, revenues, &c.

Sec. 4th. United States is to pay to Texas ten millions in 5 per cent. stock, redeemable in 14 years, and interest half yearly.

Sec. 5. President to cause stock to be issued: *Provided*, No more than five millions shall be issued until the creditors of Texas holding bonds and certificates of stock, for which duties on imports were specially pledged, shall first file at the Treasury releases of all claims against the United States for said bonds, &c.

December 13, 1850, President proclaimed this act in full force.

9 Stat., page 1005.

2d. The act of 28th February, 1855, ch. 129, (10 Stat., 617) provides as follows:

Section 1 provides that in lieu of the five millions of stock to be issued after releases of creditors, as required in 1st proviso to 5th proposition in 1st section of 9th September, 1850, aforesaid, the Secretary shall pay $7,750,000 *pro rata* among the creditors who hold such bonds or other evidences of debt, for which the revenues of Texas were pledged, as were reported to be within the provisions of the act of 9th September, 1850, either—

1st. By the Secretary's report to the President, approved by him 13th September, 1851.

2. By the opinion of Attorney-General, dated 26th September, 1853.

This last act, therefore, furnishes the precise standard for these bonds, &c., which are to participate in this fund, by saying they must be bonds, &c., included in one of these official reports.

The last act was passed more than four years after Hamilton obtained the order of the trustees of 16th September, 1850, predicated on the faith of his representations that the Bank was to be paid under the act of 9th September, 1850.

The contract was to pay ten per cent. on what sum through his instrumentality should be recovered and paid over, &c., per letter of 16th October, 1845.

This was varied by letter of 16th September, 1850, and the trustees believing, (as it shows,) in seven days after the act of 9th September, 1850, that the act provided for payment of these bonds at the Treasury to the creditors, agreed to allow Hamilton his commission upon the payment by the Treasury, in the manner provided for by the act, or otherwise.

This act provided no such payment, but left it to Texas to procure the releases and receive the ten millions of stock; nor were these bonds covered by that act as bonds to be released, as shown in the report of the Secretary, 13th September, 1851. It took a new act in 1855 to enlarge it, on Cushing's opinion, and vote $7,770,000 in money to the creditors, and not stock, thus increasing the dividend by two-and-a-half millions to creditors, and Hamilton's contract fell if it took a new act in 1855 to pay the United States Bank.

18 Md., 456.

Attorney-General Cushing's opinion of 26th September, 1853, in 6th vol., p. 130, decides:

1st. That the act of 9th September, 1850, only includes bonds and certificates of stock, not promissory notes or other evidences of debt.

Pp. 139 and 140.

2d. Bonds and certificates of stock for which all revenues or duties specifically were pledged, and this includes all bonds negotiated by Texas.

P. 140.

3d. He includes issues under the act of Texas:

1. 7th June, 1837.
2. 18th November, 1836.
3. 15th May, 1838.
4. 22d January, 1839.
5. 14th January, 1840.

4th. He excludes all the new issues under the act of 20th March, 1848, which he says all parties agree are to be excluded.

He then concludes that all the creditors thus benefited must file their releases, or their original vouchers, before any part of the reserved five millions can be paid to Texas under said act of 9th September, 1850.

Old Record, p. 53.

The act of 28th February, 1855, section 2, makes new certificates, &c., issued by Texas in lieu of originals surrendered, good evidence of the originals.

Sec. 3. Not payable to holder until he first releases Texas and United States from all claim on said securities.

Sec. 6. This act of no effect until a copy of Texas law, assenting to it, is deposited at Treasury, and until Texas shall pass act withdrawing all claims for Indian depredations or otherwise.

Sec. 4 requires ninety days' notice, by Secretary, of the day of payment, and no payment until thirty days after bonds, &c., filed. These conditions were not fulfilled, particularly in the matter of releases.

See Jones' last deposition, Rec., pp. 37 to 40.

Secretary's notice and letters and stipulations endorsed on those letters.

See Rec., pp. 40 to 42.

Hill has actually got his money without a release, by an

oversight of the Treasury officers, merely because they took for granted our injunction was the only obstacle, and neglected to examine the law and Secretary's orders.

5th. The Secretary having, under the 4th section of 28th February, 1855, fixed the 13th June, 1856, for the day of payment, and it being represented by the Secretary that $389,693.07 had not been presented by that day, the joint resolution of 18th August, 1856, extends the time to 1st January, 1857, and it expressly requires that after paying those who thereafter come in, the Secretary shall distribute the residue of seven millions seven hundred and fifty thousand then remaining *pro rata* among all the holders who may then have released and filed their claims.

Query. Could any be paid until all the releases were filed in bloc, as Cushing says?

See 6th vol. Attorney-General's Opinions, 144.

The resolution of 26th December, 1856, extends time to 1st January, 1858, and repeals so much of joint resolution of 18th August, 1856, as authorized Secretary to distribute *pro rata* among those who had filed their releases.

11 Stat., page 252.

And it was further extended to 1st January, 1861.

11 Stat., page 417.

Under these laws, no money could legally have been paid until all the releases were filed, and the *pro rata* of each releasing creditor ascertained by 1st January, 1861.

It is therefore manifest from this review of Congressional legislation—

That the order of 16th September, 1850, was fraudulently obtained from the trustees by Hamilton, and no title vested under that order in Hamilton or his assignees, as Wetmore accepted this order, subject to the equities and conditions set forth in the letter of the 16th September, 1850.

It was not until the 17th February, 1859, that the void title of Hamilton and his assignees was cured and made valid by the compromise made between Spain and the trustees, which enured to the benefit of Hamilton's assignees, and for which the Bank, for $12,051.48, paid to it as a compromise, out of this very one-tenth, retired from its contest with the consent of the defendants in the injunction suit of Spain.

Then, and not till then, and by Spain's act, did Hill and the other assignees become first invested with a valid title. Surely this act and compromise of Spain for the benefit of Hill's estate cannot retroact a title *ab initio*, so as to charge the injunction bonds for interest prior to 17th February, 1859, and we shall show that since that date no recovery can be had for other reasons.

3d Point. That the above review of Congressional legislation demonstrates the fact that Hill's administrator having omitted to file his release as required by law, neither he nor Wetmore could legally claim his share of the money during the pendency of Spain's bill, and in fact he obtained his money in 1861 by a blunder of the accounting officers, and wrongfully. There was nothing in the injunction, even if it had named him, to prevent his filing his release so as to be qualified to claim the money when the injunction was dissolved. His not filing it even then shows he was not prevented by the injunction.

4th Point. The whole contract of Hamilton was in fraud of law, as designed to pay him for obtaining legislation, and it was therefore void.

See our answer, p. 5, Exhibits A and B.

Marshall *vs.* B. & O. R. R. Co., 16 Howard, p.

And it never became valid or operative to confer any

right on his assignees until 17th February, 1859, when Spain effected his compromise with the trusteees who were disputing the validity of that contract.

5th Point. Assuming, for the sake of argument, that Hill's administrator can recover on these bonds lost interest, computing from the 31st May, 1856, as his damage, on the theory that he was then entitled to his money but for Spain's injunction, the account would thus be stated.

See p. 13.

ACCOUNT STATED.

Corcoran & Riggs advanced, 25th September, 1850, (p. 75,) $25,000.

Interest to 31st May, 1856, date of first injunction bond, is five years eight months.

But five years' interest would be $7,500, which more than exceeds the limit of $30,000 stated in their order.

So that the whole $30,000 was due at the filing of the bill, and no more could be recovered on that order.

That is to say, if we had not filed our bill, this $60,000 would be preferred to Hill's claim. Also,

Wetmore's		$2,500 00
With interest from 1st March, 1851, to 31st May, 1856, filing of bill, say five years, is		750 00
Add Corcoran's		30,000 00
		33,250 00
Deduct this from balance on amount injoined		69,720 60
Total subject to Hill is		36,470 60
Hill's claim was	$33,500 00	
Interest at 6 per cent. from 4th January, 1852, (see p. 101,) to, say, 31st May, 1856, is 4 years and 4 months	8,643 33	
		$42,143 33
Deficit of fund		$5,672 73

Even at 6 per cent. as calculated by auditor, it more than absorbed the balance in Treasury, so that if our bill was the only obstacle, Hill would have drawn at its date. $36,470 60

The interest on this sum from 31st May, 1856, date of injunction, to 19th February, 1861, say 4 years and 9 months, when injunction was dissolved and balance paid, is.. 11,941 15

48,411 75

Then paid..... 35,386 94

$13,024 81

And this is all the damage he has in any event sustained, and not $14,289.54, as claimed, and it is to be reduced by the $2,500 paid by Pierce Butler, and $5,000 by Kanawaha Company.

If the first bond is saved by the point that Hamilton then had no interest, it results that Hill's only damage would be the interest on the balance he could have drawn from the date of second bond, thus:

Interest on $36,470.60, from 2d May, 1859, date of second bond, to 19th February, 1861, when injunction dissolved, one year and nine months, say $3,824.10.

And this is the measure of his damages, if any can be recovered on that bond.

Deduct amount realized from Pierce Butler, $2,500, and from Kanawha Company by Corcoran & Riggs, $5,000.

But the second injunction bond cannot be sued upon by Hill's administrator, or enforced by him, because at its date (23d April, 1859) no representative of Hill had been made a party to said bill of Spain. It was not until 22d October, 1860, that his representatives appeared and answered under an agreement, dated that day, which will be found in

printed record, beginning at page 37 and ending at page 52.

See the 9th article of said agreement, page 45.

Answer of Hill & Bass, filed under agreement, pp. 64–69.

How can Hill's estate claim on either of these bonds, which do not name it as obligee, and which were given before its representative was even made a party?

Again, the second injunction bond was only cumulative security to the first, and cannot be used to indemnify any party who was not restrained by the writ of injunction issued on 31st May, 1856.

As to the Cross-Bill of Corcoran & Riggs,

We shall contend:

1. That they were not actually restrained by the writ of injunction, which is necessary.

20 Md. R., 105–107.

By looking at Spain's writ of injunction, it will be seen that while Corcoran & Riggs were named in the caption, and also in the return of the marshal, yet by a clerical misprision in making out the writ, they are not mentioned or restrained in the body or operative part of the writ.

2. They only advanced to Hamilton on 25th September, 1850, $25,000, and took an order for $30,000, beyond which they could not claim interest.

Spain's record, page 75.

Their exceptions claiming interest beyond $30,000 were disallowed by the court.

Printed record, pages 136, 137, 138, 139.

Therefore, as Corcoran & Riggs could not in that suit

claim interest and principal over $30,000, they cannot in this suit, for the same reason, as, otherwise, their claim would be usurious. In fact, they agreed with Hamilton to claim no more than $30,000 would cover in any event, in consideration that they were to have a bonus of $5,000 if the order had been paid the day after it was given.

They have been fully paid, and must refund to Hill's estate the $5,000 recoved by them from Kanawha Co.

But their claim is obnoxious to the second and fourth points above, urged against Hill's claim.

3. The third point as above urged against Hill, in reference to his omission to file a release as required by the acts of Congress and Secretary, applies in principle to Corcoran & Riggs. It is true they filed a release, the date of which does not appear, but according to the Secretary's letters he required, before Wetmore or any one should draw a dollar of this one-tenth part, that not only each assignee of Hamilton should release, but Hamilton himself should release.

The reason of this is obvious—it was because Wetmore, Corcoran & Riggs, and Hill only held liens on Hamilton's interest as disclosed by Wetmore's affidavit.

See Secretary's letters.

Hamilton, therefore, had a resulting interest to release as required by law, before his assigness could release their claims, otherwise the United States and Texas would remain open to claims by Hamilton which it was designed to have released, as the United States meant to compromise, and pay a *pro rata* only on claims in full discharge of all said claims.

Hamilton died 15th December, 1857.

Old Record, 32.

And it is not pretended that he or his administrator has

ever released to Texas or the United States to this day. This point is equally fatal to the right of Hill or Wetmore, as to Corcoran & Riggs, to recover on these bonds.

The whole Treasury payments have been in violation of law.

Again, the trustees of the Bank of the United States, being joint obligees, released these injunction bonds, with consent of all parties.

Old Record, pp. 32 and 34.

This, in law, releases the bond *in toto*, as the action, if maintained at all, must be in names of all the obligees in bond.

As to the claim for counsel fees, it is answered by the cases in

13 How., 371.
Sedgwick on Damages, 96, &c., side paging.
Wallace, Jr., 164.
19 Georgia, 468.
Gadsden *vs.* Bank of Grotam, 5 Richardson, 342.

This case also decides that interest cannot be recovered in a case like ours.

P. 344.

All of which is respectfully submitted.

T. T. CRITTENDEN AND T. J. DURANT,
For Appellants.

Supreme Court of United States.

OELRICHS AND MAY

vs

HILL, WILLIAMS *et al.*

BRIEF OF P. PHILLIPS,

FOR APPELLEE.

Statement of original litigation.

The Bank of the U. S. being indebted to W. S. Wetmore for money loaned, assigned to ~~them~~ as security therefor certain Bonds of Texas.

These Bonds were called in by Texas, and surrendered by Wetmore, who received, in lieu thereof, certificates for their amount, *issued in his name.* The form and nature of these certificates are stated at p. 54.

Congress, subsequently, to wit: in 1850 assumed certain debts of Texas, and Wetmore, in pursuance of the act, filed these certificates for payment in the office of the Secretary of the Treasury.

The Bank had agreed to pay Gen'l. Hamilton ten per cent. on any amount which it should receive from the U. S. on this indebtedness over and above the amount due to Wetmore, in consideration of his services in urging the passage of the act, and subsequent to its passage

it gave Hamilton a written order on Wetmore to hold the one-tenth to his use and subject to his order. This was presented to Wetmore and accepted by him.

Various assignments of this fund were made by Hamilton in amount much greater than his interest, and on the 31 October, 1856, Albertus Spain, one of the assignees, filed his bill to assert his priority of right thereto against Wetmore, Corcoran and Riggs, et al.

His Bill inter alia, avers: that of the certificates filed by Wetmore in the Department, he claims to hold the one-tenth, which is equal to $81,772,08, "as the right and property of said Hamilton," subject to certain alleged assignments made by said Hamilton, 44.

The Bill then proceeds, "Your orator charges that "said Bonds and Certificates *are the property of said Ham-* "*ilton*, and that said W. holds the one-tenth as collateral "security for a debt due to him by said Hamilton, a- "mounting to $2,500."

That he further claims to hold the one-tenth in trust to pay other orders or assignments of said fund, especially one in favor of Corcoran and Riggs, for 30,000, *and one in favor of H. R. W. Hill, for* $58,000. That he also holds the fund to pay a claim of the Trustees of the Bank of the U. S. for $12,051.48, pp. 44, 45.

Asserting a superior equity as being prior in time, the Bill prays: "*that said Wetmore, his assignees aiders and abettors* "*may be enjoined and restrained from receiving the sum of* $81,772, *being the one-tenth of the three certificates, &c.* p. 49.

Subpenas were prayed against all these parties, and the representative of *Hill prayed to be made defendant when discovered.* P. 49.

On the same day it was ordered that an injunction be issued "*as prayed for*," p. 9.

A Bond in the penalty of $15,000, signed by J. F. May and Henry May, in favor of W. S. Wetmore, Corcoran and Riggs, and the Trustees of the Bank, was filed and approved 31 May, '56. P. 10.

On same day the writ of injunction was issued, directed to Wetmore, Hamilton, Corcoran and Riggs, and the Trustees of the Bank of the United States. p. 10.

It recites the filing of the Bill and its object. The restraining clause is in these words,—"You, the said W. "S. Wetmore, *your assignees, aiders and abettors*, are here" by restrained and enjoined from asking for or receiv- "ing the sum of $81,772,08, being the one-tenth part of "three Bonds or Certificates, &c.

This writ was served on Wetmore and Corcoran and Riggs.

Answers were filed by Wetmore, Corcoran and Riggs, the Trustees of the Bank of the United States, and by Bass, the representative of Hill.

On 24th March, 1859, *on motion of the defendants*, it was thus ordered, "It appears to the satisfaction of the Court that there is *not sufficient security to indemnify the defendants for their costs and damages, &c.*, it is ordered that the complainant file a Bond in the penalty of $20,000, conditioned to pay the *defendants* such costs and damages as they may *respectively sustain*.

Prior to this the complainant had released his injunction as to the sum of $12,051, improperly enjoined, it not being a part of the one-tenth, and this had been paid by Wetmore to the Bank, and a release of the injunction Bond executed.

The second Bond was accordingly filed, executed by the complainant Spain and Henry Oelrichs, on 23d April, 1859. p. 11.

This by *consent of the parties* was ordered to stand in lieu of the Bond heretofore filed, reserving the right of the obligees to have recourse to the original Bond for interest heretofore accrued. p. 12.

The obligees named in this Bond are Wetmore and Corcoran and Riggs.

It recites the injunction issued by the Court to restrain the collection of the sum of money mentioned in the writ; it recites also that certain portions of the money so enjoined had been released and paid over, and the condition is—"that if said Spain &c., shall prosecute the "writ of injunction to effect, and pay *as well the costs*, "*damages and charges that shall occur in said Circuit Court* "*in Washington County, as all costs, damages and charges that* "*shall be occasioned by said writ of injunction*, and shall in "all things obey such order and decree as the said Court "shall make in the premises, then the obligation to be "void and of no effect, otherwise to remain in full force "and effect."

The cause was submitted for decision on an agreed statement of facts, filed 9th November, 1860, and on 19th February, 1861, it was decreed—

1. That the legal title to the fund was from the 9th November, 1849, and still is in Wetmore. That it was not conveyed by Wetmore's transfer to the Bank on 11th April, 1854, the day when Wetmore's mortgage debt from the Bank was paid, nor did it revert to the Bank by said payment.

2d. Wetmore's transfer of the nine-tenths and its acceptance by the Bank is a recognition that one-tenth was to remain in Wetmore's hands under the Bank's order of 16th September, 1850, in favor of Hamilton.

3. The condition in the order of 16th of September, 1850, by which a reverter could be claimed, was only for the benefit of the Bank, and the acceptance of the nine-tenths on 11th April, 1854, renounced any such benefit as to the remaining one-tenth.

4. That from the 16th September, 1850, Wetmore held the *legal title as trustee of the fund*,

First, to pay himself, with interest, the loan of $2,500

Second, Corcoran & Riggs, - - - - - - - 30,000

Third, I. Dick Hill, with interest from 9th March, 1852, - - - - - - - - 33,500

From this decree Spain alone appealed. The Bank acquiesced then, and is still content with it. At the December Term, 1863, this Court affirmed the decree with costs.

(1 Wall. 604.)

Pending the appeal, there being no supersedeas and the decree having dissolved the injunction, the Treasury paid to W. W. Corcoran, as attorney for Wetmore, on 20th March, 1861, the sum remaining due on the one-tenth, - - - - - - - - - $69,720.60

There had been previously paid to the Bank, the sum improperly enjoined,—to wit, 30th March, 1859, the pro rata on $12,051.48.

The sum they paid to Corcoran as agent was in three drafts, intended to represent the interests of the parties as settled by the decree, (p. 63,) to wit,

For Wetmore, - - - - - - - -	$4,333.66	
" Corcoran, - - - - - - - -	30,000.00	
" I. Dick Hill, - - - - - - -	35,386.00	
		$69,720.60

(Jones' Dep. p. 34.)

Wetmore and Corcoran & Riggs were paid in full, but on Hill's debt, as found by the decree, $52,457, there still remains unpaid - - - - - - - $17,071

Soon after the injunction was issued in this case, two others were issued on Bills filed in same Court: one by the James River & K. Company, and one by Pierce Butler. In the former an injunction bond was executed in the penalty of $5,000, signed by Caperton and others; in the latter, one signed by Butler and others in the penalty of $2,500. (p. p. 13 and 14.)

Butler's bill was heard with that of Spain, and subsequent to the decree in that case, the James River & K. Company dismissed their bill.

In both of these cases, the Bonds expressly include among the obligees John M. Bass, executor of Hill as well as Wetmore and Corcoran & Riggs; while in the two Bonds filed in Spain's case, neither Hill nor his executor is expressly named as obligee.

Present litigation.

The Bill now before the Court was brought to assert Hill's claim for damages occasioned by these several injunction bonds. To aid in this the representatives of Wetmore and John M. Bass, executor, are joined as co-complainants. The securities in the two bonds in the Spain case, May and Oelrichs; and the security in the bond in the James River Company's case, Caperton, are made defendants. Oelrichs is a non-resident, but it being agreed that it was best to settle in one suit the interests of all concerned, it was stipulated with Mr. Brent, the solicitor for Spain in the original suit and for the defend-

ants named in this suit, that if the solicitor in this suit would include in the bill to be filed the name of Oelrichs that he would appear and answer for him, (p. 1,) and this has been done.

The Bill is also filed against Corcoran & Riggs to seek a discovery from them as to whether any settlement had been made with them of the Bond in the James River case.

It is also filed to marshal assets; and to assert the right of Hill to the whole of this latter Bond and compel Corcoran & Riggs to resort for payment to the other Bonds, they being named as obligees in all, while Hill is named only in one—provided it should be decreed that the omission to name Hill specifically as obligee in the Spain Bonds, prevented his looking to them for redress.

As to the Bond for $2,500 given by P. Butler, the complainant states its payment by Wistar & Hollis, his representatives; and as to these representatives—the representatives of Henry May, one of Spain's securities; Spain himself; Ellis and Ould, parties to the James River Bond, all non-residents and beyond the jurisdiction—the Bill prays that process may issue against them if they should come within the jurisdiction.

It is agreed that McCalister, Randal, Jaudon, Bayard, Fallon, Reed, Holfords, Lamar, and Cuyler, who appear as obligees in Spain's Bonds, have now no interest therein by reason of their respective releases. (p. 36.)

On this Bill, answers and proofs, the cause was tried, and on 19th March and 27th April, 1870, preliminary and final decrees were rendered asserting Hill's right to resort to the Spain Bonds for redress of damages. The appeal now before the Court is taken by May & Oelrichs.

Interpretation of Spain's Bonds.

What did all the parties, the Court, the obligees, as also the obligors themselves understand, and intend by the execution of the Bonds in Spain's case, the first for $15,000, and the second for $20,000?

The true principle of interpretation is to give to the agreement the sense, in which the party making it, believes the other party to have accepted it, if in fact he did so accept and understand it.

2 Kent's Com., 721.

The attendant and surrounding circumstances are competent evidence for the purpose of placing the Court in the same situation, and affording the same advantages for construing the instrument, as were possessed by the parties executing the agreement.

Nash v. Towne, 5 Wall, 699.

Bradley v. Washington, 13 Pet., 89.

Bellinger v. Kitts, 6 Barb., 278.

1 Story's Eq., § 168, p. 186.

The appellants seek to escape these well settled principles, by asserting, that they are *securities only*, and stand on the strict construction of the contract.

It is shown, that they signed as principals, and not as sureties, But waiving the doubtful question, whether in Equity they would not be so regarded, and treating them for the argument in this character—we still maintain that these rules of interpretation are equally applicable to them.

There is undoubtedly a sense in which it may be said that the surety is not to be held beyond the precise stipulations of his contract.

But when the question is as to the meaning of the written language, there is no difference, and ought to be none, between the contract of surety and that of any other party.

Benjamin v. Hilliard, 23 How., 164.

Gales v. McKee, 13 N. Y., 236.

Mauran v. Bulley, 16 Pet., 528.

"If there were any doubt, that construction should be given, which should be more to the advantage of the complainant, on the general ground that a party who takes an agreement prepared by another, and on its faith parts with his property should have a construction given to the instrument favorable to him; and on the further ground that when an instrument is susceptible of two constructions—the one working injustice, and the other consistant with the right of the case—"that one should be favored which standeth with the right." Noonan v. Bradley, 9 Wall, 407.

The special application of this rule, to securities on injunction bonds will be found in—

Williamson v. Hall, 1 Ohio St., 192.

Weatherby v. Skackleford, 37 Miss., 567.

In the latter of these cases where the obligors were held liable for a larger amount than that of the judgment recited in the Bond—the Court say; "doubtful or general phrases must be resolved by reference to the *law and circumstances of the case* connected with the contract." See Levy v. Taylor, 24 Md., 282.

Our position then is, that the bonds executed in favor of *Wetmore* cover not only that portion of the fund in which he had a personal interest—but also the other portion which he held *in trust* for Corcoran & Riggs and Hill,

that the Bond was in fact a security attached *to the fund enjoined, and was made to him as trustee for these parties.*

In opposition to this the answer avers, *that* "so far as "the said Wetmore is named as obligee in said Bonds "he was only meant to be protected thereby, to the *ex-* "*tent of his individual interest or claim*—but the interest of "Hill was not meant to be protected or indemnified by "means of said injunction Bonds as no *process was prayed* "*or ever had against him.*"

It will be perceived that the only ground assigned, why the Bond should not operate to protect Hill's interest is, "that no process was prayed or ever had against him."

It is true that no *subpœna* was served on him—but the bill prayed that his representative when discovered should be made a party. On the face of the bill Hill's interest is specifically stated. He was a necessary party to the suit.

Before, as well as after filing his answer—he was bound to obey the injunction though not served with process, and if he disobeyed, was liable to attachment. The Bond when filed was for the benefit of all the defendants enjoined, whether served or not.

Cumberland Co. v. Hoffman Co., 39 Barb., 19.

McNeill v. Garrett, 1 C. R. & P. H., 98.

That these Bonds were not intended as indemnity, merely for the personal claim of $2,500, which Wetmore held is manifest.

1st. Spain in praying the injunction describes the fund he wishes to enjoin, as amounting to the large sum of $81,000, at the same time he sets forth par-

ticularly the fact that Wetmore only claimed for himself the sum of $2,500, that the large remainder of this fund—Wetmore claimed he held in trust for Corcoran & Riggs and Hill. But he enjoins the whole sum.

2d. Having thus stated that much the larger portion of the fund belonged to other parties than Wetmore, the Court could never have consented to enjoin the whole fund on a Bond securing only the party who had the smallest interest therein.

3d. The uniform practice in such cases is to require security for all the defendants in interest, and a departure from this would violate the principles of Equity.

4th. The order for the Bond is not in violation, but in exact conformity with the rules and practice of Chancery—it expressly requires the Bond to be "conditioned to pay the *defendants* such costs "and damages as *they* may *respectively* sustain by "reason of the injunction."

5th. When, therefore, the Court approved the Bond, and by *consent of the defendants* substituted it for the first—the Court as well as the defendants must have understood it to be such a Bond as the order directed to be given.

6th. This was not only the construction given by the Court and the obligees only, but by the obligors themselves.

The prayer is for an injunction against Wetmore, "*his assignees, aiders, and abettors*," restraining *them* from asking for or receiving the sum of $81,000, (49)—and the writ which was issued on this prayer is to same effect.—

"You the said W. Wetmore, your assignees, aiders, and abettors, are hereby enjoined and restrained from asking for, or receiving the sum of $81,000," &c. (10.)

In another portion of the bill the prayer is, "that the said Wetmore and *all and each of the said named defendants their assignees, aiders and abettors may be enjoined*," *&c.*

Now, construing the Bonds in reference to this prayer, Hill is directly included—for Hamilton is one of the "said named defendants—and Hill is his "assignee."

The answer thus controverts this position. "The bill of Spain having prayed for an injunction and the *writ* having issued merely to restrain Wetmore, his assignees, aiders and abettors, &c., the representatives of said Hill, and the said Corcoran and Riggs not being *assignees of Wetmore*, cannot claim that any damage was done to them respectively, by the operation of said writ of injunction.' p. 26.

The denial of liability includes Corcoran & Riggs though "nominated in the Bond," on the theory, that only the parties restrained by the writ have the right to complain.

But seeing that on this theory the writ not only restrained Wetmore, but "his assignees, aiders and abettors," the answer advances the argument so far as to deny that these parties are "*assignees*" of Wetmore.

It may be true that, technically, they were not assignees of Wetmore's, but in ordinary language they might be so described, as Wetmore held for Hamilton and had accepted the orders given by him in favor of these parties.

But waiving this, and accepting the test made in the answer, how is it that the non-responsibility is confined to the denial that they were "assignees?" The other two descriptive words, "aiders and abettors" are en-

tirely ignored; as to them, there is no attempt to deny that they would include the present claimant.

Undoubtedly, Hill and Corcoran & Riggs, the *cestui qui* trusts, were *aiding and abetting* Wetmore in his efforts to procure payment at the Treasury. Their large stake in the fund was their motive, and their judicial struggle its manifestation.

Again, the answer insists, that as these parties were not the "assignees of Wetmore," they—"*cannot claim*" that they were damaged by the injunction.

This is certain, that Corcoran & Riggs and Hill were deprived of the use of $69,720, less the small amount due to Wetmore, for five years, by reason of Spain's injunction operating on the whole fund. Practically the injunction operated as directly on them as if they had been specifically named in the writ of injunction. The decree establishes that these parties were the owners of the fund when the injunction was issued. That in point of fact they have been greatly damnified is not and cannot be denied. The sole question is, have they in law any redress on these Bonds for the wrongs thus inflicted? If they have not, it is not, because they were not entitled to an indemnity, but because by accident, omission, or fraud they have been deprived of it.

That the indemnity to Wetmore will enure to the benefit of his *cestui qui* trust, finds support in the analogous case of an indemnity of insurance. A policy effected in the name of A. B. was held operative though A. B. held only as trustee.

Ins. Com. vs. Chase, 5 Wall. 509.

Res Judicata.

Most of the answer is concerned in setting up matter which goes to the denial, that Hamilton ever had any interest in the fund.

The right to litigate these questions after the decree, rests upon the assumption that the present appellants were *strangers* to the litigation of Spain, and, therefore, not bound by the decree made in his case.

These parties joined Spain in a bond for injunction, on the sworn statement of Spain that the fund belonged to Hamilton, and they jointly and severally stipulated that they would pay the damages arising therefrom if Spain failed "to prosecute the injunction to effect."

That Spain would be concluded in this suit on the principle of "*res adjudicata*," as to all the matters involved in the injunction suit, is too plain for denial. Do his co-obligors in the injunction bond occupy in law a different position?

If an action at law had been brought upon the bond, the only essential averment, after setting out the condition, would have been that the *writ had not been prosecuted with effect.* Oelrich & May could make no other issue. They could raise no question as to the facts adjudicated, nor to the validity of the adjudication itself. The decree in the case would not only be evidence, but conclusive evidence, and this for the simple reason that by the very terms of their obligation they had made it so.

2 Gill. & J., 431.

Gorman vs. Lenox, 15 Pet., 115.

It was a great mistake to say that Oelrich and May were strangers to this litigation, and therefore not bound

by it. Though not technically parties to the suit, they voluntarialy identified themselves with it, and are as as much bound as if they had been named on the record.

Thus, where one assigned a mortgage covenanting that it should produce a certain sum, and if it did not he would pay the deficiency, held that, the assignee having subsequently foreclosed the mortgage and sold under the decree without making the *assignor a party*, these proceedings were evidence against the latter in an action on the covenant, and that he was estopped by the decree from questioning the amount found due on the mortgage.

Rapelye vs. Prince, 4 Hill, 122.

Methodist Church vs. Barker, 18 N. Y., 464.

In this case the defendants occupy the same position as if the Court which awarded the injunction had been authorized (as it is in many States) to assess the damage on dissolution. That a separate bill is filed to assert the right in nowise changes their legal relations.

Edwards vs. Bodine, 11 Paige, 226.

Dowling vs. Polock, 18 Cal., 625.

We maintain, therefore, that all the facts put in issue by Spain's bill, and passed upon by the decree as set forth in the foregoing statement, are as conclusive on May and Oelrichs as on Spain.

This doctrine is applied to sureties on an *administration bond.*

McLaughlin vs. Bank, 7 How., 229.

Baggott vs. Boulger, 2 Duer, 174.

McCalla vs. Patterson, 18 B. Monro, 210.

Boyd vs. Caldwell, 4 Rich., 120.

Stovall vs. Banks, 10 Wall, 586.

To sureties on *bail bonds.*

Parkhurst, 23 Verm't, 538.

Morrill vs. Hull, 13 How., 215.

To bonds of indemnity to sheriff.

Fay vs. Ames, 44 Barb., 327.

Lovejoy vs. Murray, 3 Wall, 1.

So sureties on an *injunction bond* are in like manner bound by the terms of their contract, and cannot inquire into the grounds of an injunction in an action on the bond.

Church vs. Barker, 18 N. Y., 463.

Dowling vs. Polock, 18 Cal., 629.

Lothrop vs. Southworth, 5 Mich., 448.

Riddle vs. Baker, 13 Cal., 306.

In fine, the principle applies wherever the bond stipulates for the performance of a decree or the consequence of a suit between other parties.

Rapelye vs. Prince, 4 Hill, 123.

Gorman vs. Lenox, 15 Pet., 115.

And extends to all matters necessarily involved in the cause of which might have been properly litigated therein.

Emberry vs. Connor, 3 Coms., 511.

Those therefore cannot be said to be strangers who voluntarily enter into the controversy and become responsible for the acts of one of the litigants. The order for injunction in this case was made on the faith and credit of these appellants, and they cannot now be allowed to say—we are strangers to your proceedings—your decree is *res inter alios acta.*

It is true that a decree binds only the *parties* to the

proceeding. But the parties are not only those who appear as such upon the record, but equally includes all who are identified in the interest with the party litigating.

1 Greenleaf Er., § 189, 523.

Hamilton had no interest in the fund.

If we have properly applied these principles to the present case, the controversy is closed; but we now examine the case on the assumption that we have not.

The defence mainly insisted on is that no damage has been occasioned by the injunction bond, for that, in fact, Hamilton never had any interest in the fund enjoined, and consequently his assignees, Corcoran & Riggs, and Hill, had no cause to complain.

We have agreed that the answer filed by the trustees of the Bank in the case of Spain may be regarded as a deposition taken in this case; but on the authority of the cases cited, we deny that this evidence is competent.

We proceed now to show that, if competent, it is fruitless.

The trustees alleged that when they gave their order to Wetmore on the 16th September, 1850, to hold the one-tenth subject to Hamilton's order, it was on Hamilton's statement that their indebtedness was provided for by the act of Congress. This they deny to be true.

It is evident that, subsequent to the filing of their answer, the trustees discovered they had fallen into an error, for they took no step to sustain it by evidence.

The error on the part of the trustees may be ex-

plained by their ignorance of the true effect of the subsequent act of 28th February, 1855.

This act did not create a new class of Texas creditors, but merely affirmed the executive construction of the act of 1850. It directed the payment to "creditors of Texas who held bonds for which the revenues of the Republic were pledged, *as were reported to be within the provisions of the act of* 1850, by the Secretary of the Treasury, *or that came within the provisions of the act according to the opinion of the Attorney General of* 26 *September*, 1853."

Again, it is asserted that, Hamilton had no interest because his agreement with the Bank was void as against the policy of the law. It is not against this policy that one may agree to address the legislature by argument in favor of a certain measure.

But we need not enter into this subject, for the objection is wholly misapplied.—This is not an action to enforce the agreement, but one which relates solely to the disposition of money paid on such agreement.

Brooks vs. Martin, 2 Wall, 78.

The acts of Congress have been already cited. The opinion of the Attorney General, giving instruction to to act of 1850, will be found in 6 vol. Opinions, p. 130.

The certificate in evidence, given by the State of Texas, shows that the indebtedness fell within the discription. But what better evidence is required to sustain Hamilton's assertion, and prove the falsity of this answer, than the fact that the Government recognized it, paid nine-tenths in 1856, and the remainder when the injunction was dissolved.

Compromise with the Bank

It is further asserted that the bank did not litigate this question because of a compromise made with Spain, in which he released his injunction for the sum of $12,051.

But the truth of the matter is, Spain had alleged in his bill that Wetmore not only held the one-tenth as trustee for Corcoran & Riggs and Hill, but also for the trustees of the bank to the amount of $12,051.

On the coming in of the answer of the bank, it was shown that, in enjoining the whole sum of $81,722, too much had been included, as Hamilton only had a claim for commissions on the above sum, less $12,051. This averment was agreed to be true, and the injunction accordingly dissolved for that sum. Thus, from the fund in Treasury originally held under injunction, say $81,722 08
The bank received their *pro rata* on this $12,051, 9,266 95

Leaving this..... $72,505 12

as the true amount of Hamilton's claim for commissions, and which was all that Spain had any right to enjoin, as he claimed only under Hamilton.

The release, therefore, of this $12,051 was demanded by Spain's own showing of his claim as assignee of Hamilton.

On receipt of this pro rata the Bank was satisfied—but it did not withdraw from the suit and was a party to the end of the litigation. The pretended compromise was on 17 February, 1859, and the agreed statement on which Spain's case was tried was on the 9 November, 1860, the 1 article of which declares that the fund belonged to Hamilton under his agreement with the Bank, and this statement is *also agreed to be taken for the trial of this case*, 36.

Bond discharged by release.

It is again maintained by the answer that the release by the trustee of the Bank, discharged the Bond as to those obligees who did not release.

But this rule cannot apply to a case where the interest of the obligees is separate and distinct. No act of one under such circumstances could qualify, much less destroy, the rights of another.

Even if the release had been by the present complainants, *equity* would not give it effect beyond the intention of the parties and the justice of the case.

Clagott vs. Salmons, G. & J., 315.

Claim not properly presented for payment.

Again, it is urged that no loss of interest has accrued, because the claim was never presented in such a form as to authorize its payment by the Treasury if no injunction had been granted.

The bill of Spain prayed the injunction, on the averment "that the Secretary of the Treasury *is about to pay to said Wetmore the sum of* $81,772.08.

The attempt is now made to controvert this sworn statement, and to prove that no payment could have been made, because neither Hamilton nor Hill had filed releases, as were required by the Secretary of the Treasury.

If the law required this, the presumption is that the

releases *have been filed;* the money has been paid. This presumption is not rebutted by the admission that these releases are not found in a certain file of papers in the Department.

Mr Jones, examined by defendant. says: "I do not know whether releases were filed or not, nor that the filing was dispensed with; I know the payment was made, *and have no reason to think that in this case there was any departure from the established rules for releases.*" p. 39.

If it were admitted that no such releases were filed, it could be well maintained that the law did not require them, and that the requirement of the Secretary was, therefore, without authority. The act requires releases from thh "*holders of* the securities." Wetmore was the holder and he filed the necessary releases. Neither Hamilton nor Hill, his assignee, had any interest in the certificates. Hamilton had only a personal demand upon the Bank for his commissions, when the sum of money was collected and paid over. This is settled by the decree.

But again: What necessity was there to file these releases after the injunction lodged in the Department which forbade all parties from receiving the fund enjoined? Neither the act nor the Secretary's regulations fix the time at which this is to be done, so it occurs before payment. This payment could not take place until the injunction was dissolved and the interest of the several parties ascertained. When the decree was presented showing that neither Hamilton nor Hill had any interest in the certificates, and decreeing that *Wetmore was alone entitled to receive the whole sum*, (if, in fact, no releases were filed) we can do no otherwise than conclude that the Secretary considered such releases unnecessary, and therefore waived them, which he had the right to do.

Multifariousness.

The answer concludes by averring that "the respondents are advised that the bill is manifestly multifarious, inasmuch as it claims relief against the sureties in two distinct injunction bonds, signed by different sureties."

The second bond, signed by Oelrichs, was by order of the court substituted for the first, reserving the right of the obligees to have recourse to the first for the interest that had accrued.

In this bill the complainants have elected to look to the first bond for so much of the interest as had accrued, and, to avoid expense and unnecessary litigation, they have made the obligors in both, defendants.

When the complainants have a common interest, and the defendants are concerned only in portions, the court will allow the bill to stand, if convenient, to try the whole matter in one case.

Shields v. Thomas, 18 How., 259.
Carrol v. Roosevelt, 4 Ed. Ch., 211.
Att'y Gen'l v. Poole, 4 My. & Cr., 17.
Brinkerhoof v. Brown, 6 John, C. R., 152.
Boyd v. Hoyt, 5 Paige, 65.
Wilson v. Castro, 31 Cal. 420.

The object of the rule as to multifariousness is to protect the defendants from unnecessary expense. But it would be a perversion of the rule if it were to impose on the complainant and the other defendants the expense of two suits instead of one.

Lewis v. Edmunds, 3 M. & C., 85.
Campbell v. Mackay, 1 M. &. C., 603.
Gaines v. Chew, 2 How., 642.

When a party goes into the examination of the evidence, he waives the plea of multifariousness.

Gibbs v. Claggett, 2 G. & J., 14.

This is a full answer to the objection without adverting to the 27th rule of practice, which prohibits the court from considering the demurrer, unless upon certificate of counsel that in his opinion it is well founded in law, supported by the affidavit of defendant that it is not interposed for delay.

Measure of Damage.

Having considered all the positions of the appellants taken by answer or argument in the Court below—our enquiry now is as to the proper measure of damage.

Interest.

This consists of any loss of principal or interest occasioned by the injunction. The writ was issued on 30th May, 1856, and the decree dissolving the injunction rendered on 19th February, 1861. The separate interests of the parties in the fund should be stated as on the day when the payment would have been made at the Treasury if no injunction had been filed. The difference between the amount which Hill would then have received and the amount which he actually received would be his loss in principal, and to this is to be added interest on the former amount to the date of dissolution.

Jones' deposition shows that this one-tenth would have been paid at the Treasury on 31st May, 1856, but for the injunction. p. 39.

Counsel Fees.

Hill is also entitled to include the counsel fees paid *in consequence of the injunction.*

Whether counsel fees are recoverable in actions *ex contractu* is not the question. On this point the decisions are not harmonious.

The claim here is founded on the *express terms of the obligation*, which is to pay "as well as the costs, damages, and charges as shall occur in said Circuit Court, *as all costs, damages and charges, as shall be occasioned by said writ of injunction.*"

These "costs, damages and charges," superadded, are not referable to the Circuit Court, for *they* are specifically provided for, and if they do not cover counsel fees they are meaningless.

In Edwards v. Bodine, the condition of the injunction bond was "to pay such *damages* as the parties may sustain by reason of the injunction." The Court allowed the fees, saying "Here it is not matter of discretion—the condition is *imperative.*

11 Paige, 226.
Aldrich v. Reynolds, 1 Barb. Chan., 616.
Corcoran v. Judson, 24 N. Y., 107.
Prader v. Gwin, 28 Cal., 12.
Bronson v. R. Road, 2 Wall, 283.

The same rule is applied to attachment bonds.

Seay v. Greenwood, 21 Ala., 496.
Tropnall v. MacAfee, 3 Metc.. 34.

Jurisdiction.

The objection that the complainants had a remedy at law was not made by the pleadings in the Court below.

The 16th section of the judiciary act provides: "that suits in equity shall not be sustained in either of the Courts of the United States in any case where *plain, adequate* and *complete remedy* may be had at law."

The Court has uniformly held—

First. That this act "is merely *declaratory*, making no alteration whatever in the rules of equity on the subject of the legal remedy."

Second. That to oust the jurisdiction the remedy at law must be as "*practical and as efficient to the ends of justice, and the prompt administration* as the remedy in equity."

Boyce vs. Grundy, 3 Pet., 215.

Wylie vs. Cox, 15 How., 420.

Wilson vs. Sutherland, 5 Dall., 78.

The Courts of the District of Columbia unlike the "Courts of the United States," possess a *general jurisdiction.* They exercise all the jurisdiction which they possessed as Courts of Maryland on 27 February, 1801, as also the full power under the Constitution conferred by the act 13 February, 1801, on Circuit Courts.

The subsequent repeal of the latter act, in no wise affected the Courts of this District which still possess all the jurisdiction conferred by the State of Maryland, and all that Congress was capable of conferring under the Constitution. Authorities referred to in Phillips' Prac., 283.

The Court of Chancery in this District is, therefore, a

Court of general jurisdiction, and as to such a Court nothing is intended to be out of its jurisdiction which is not shown to be so. It is requisite that the plea must not only show that equity has no jurisdiction, but what Court has, and whether it is able to afford, a complete remedy.

2 Daniels' Chan. Prac., 716–17.

No objection to the jurisdiction was taken at the hearing, and in such a case the rule is, when neither plea or demurrer is filed before entering into the defence at large, the Court will exercise its jurisdiction "unless in cases *where no circumstances whatever can give the Court jurisdiction.*"

1 Daniels' Chan. Prac., 615.

Grandin vs. Leroy, 2 Paige, 509.

Stout vs. Cook, 41 Ill., 447.

Cockerell vs. Warner, 14 Ark., 355.

Hawley vs. Cramer, 4 Cow., 726.

Wayne v Cox 15 How 120

The objection now raised is purely technical, as it was surely the interest of the parties to the several Bonds to be brought together in one suit, where their relative rights could be determined, and thus save the necessity of another suit for contribution and apportionment.

Testing the case by the most technical rules the jurisdiction is maintainable.

First. The bill was filed by agreement with defendants' solicitor, against all the sureties in the several Bonds, and in accordance therewith an answer was filed for one of them who was never served with process and not within the jurisdiction, so as to prevent a multiplicity of suits. "One of the great principles upon which Courts

of Equity generally require all parties who are known and within the jurisdiction, to be made parties, is to prevent future litigation, and take away multiplicity of of suits. It is a matter of justice as well as of convenience that all parties who are ultimately liable to contribution should, when practicable, be brought before the Court, *so that equities between them may be adjusted*, as well as the right of the plaintiff."

Mandeville v. Riggs, 2 Pet., 428.

Second. On a promise under seal, a suit at law must be in the name of the party to the instrument. A third party for whose benefit it was made cannot maintain the action.

Parsons on Contracts, 1 Vol. 390.
Saunders v. Tilley, 12 Pick, 554.
Johnson v. Foster, 12 Metc., 167.
Hinkley v. Fowler, 15 Maine, ~~255.~~ 289

It was, therefore, the undoubted right of Hill, as *cestui qui* trust, to assert in a Court of Equity his equitable title in the Bonds, filed in Spain's case, without reference to the legal title in the trustee which might be enforced at law. And in doing this, it was proper to make the representatives of the deceased trustee parties to his bill.

2 Story's Eq. Jur., § 1057. a
Story's Eq. Plead., § 209.

"It is well settled in this Court, (says Marshal, C. J.) that a person for whose benefit a trust is created, and who is to be the ultimate receiver of money, may maintain a suit in Equity, to have it paid directly to himself."

As against Corcoran & Riggs, two of the defendants,

Court of general jurisdiction, and as to such a Court nothing is intended to be out of its jurisdiction which is not shown to be so. It is requisite that the plea must not only show that equity has no jurisdiction, but what Court has, and whether it is able to afford, a complete remedy.

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2 Story's Eq. Jur., § 1059. a
Story's Eq. Plead., § 209.

"It is well settled in this Court, (says Marshal, C. J.) that a person for whose benefit a trust is created, and who is to be the ultimate receiver of money, may maintain a suit in Equity, to have it paid directly to himself."

As against Corcoran & Riggs, two of the defendants,

the bill seeks a discovery as to what settlement they had made of the Bond given by the James River & K., Company, and it insists that if Hill cannot recover on Spain's Bonds, because not expressly named, then as C. & R., are named in all the Bonds, and Hill only in one, Equity will compel C. & R. to indemnify themselves out of the Bonds in which Hill is not named; and if C. & R. had already collected the amount of the James River Bond in which Hill is named, Equity will place him to this extent in their situation in reference to Spain's Bonds.

Ashton v. Munford, 1 Brock, 279.
Cornish v. Wilson, 6 Gill, 299.
Cheeseboro v. Millard, 1 John. C. R., 412.
1 Story's Eq., § 633.

Fourth. That if neither C. & R., nor Hill are entitled to recover on Spain's Bonds, then as against the same defendants, Equity will prefer Hill's right to indemnity out of the James River Bond, as they had received the full amount for which the Court had decreed their lien, while a large amount decreed to Hill remained unpaid. Further, that under any circumstances Hill was entitled to an account against C. & R., and to a decree against them for such portion of the sum received by them from the James River Bond, as his claim bore to that of C. & R.

Fifth. Looking to fact that each of the defendants in Spain's suit was entitled to make his election as to whether he would resort to the first Bond, looking also to the several Bonds and the various defendants, and to the character of the questions which they gave rise to, it cannot be maintained, that if there was a remedy at law, it was as "practical and as efficient to the ends of justice and its prompt administration, as the remedy in Equity."

Sixth. After a Court of Equity has acquired jurisdiction for one purpose, it will not send a party to another court, but will decide the whole cause for itself.

Franklin Ins. Co. v. McRae, 4 Greene, 229.

Kelsey v. Hobbs, 16 Pet., 269.

Souders' Appeal, 57 Penn. State, 498.

Corby v. Bean, 44 Mo., 379.

P. PHILLIPS,
Solicitor for Appellees.

WASHINGTON, 30 *October*, 1872.

Supreme Court District of Columbia.

DECEMBER TERM, 1871.

OELRICHS & MAY
vs.
WILLIAMS ET AL. } No. 216.

Additional Brief for Appellees, Corcoran & Riggs.

In the original bill of Hill's representatives, these appellees were made defendants. The bill was for discovery and account as against Corcoran & Riggs, and for the payment by other defendants, obligees in the injunction bonds, of such sum as would indemnify the complainant for damages, &c., sustained by reason of the injunction.

The bill purported substantially to be an amicable suit; and this averment was corroborated by the voluntary appearance and answer of one of the defendants, Oelrichs, who was not within the jurisdiction.

Corcoran & Riggs appeared, and answered, and made discovery, and then filed their cross-bill against the same defendants and the complainants.

The defendants, May & Oelrichs, answer the original bill, and agree that the same answer should stand as an answer of the original defendants to the cross bill. And it was also agreed by the complainants that the original bill should stand as their answer to the cross bill. Rec. p. 35. The defendants never demurred to the jurisdiction but on the contrary, by their conduct confirmed the aspect of the case given in the original bill, that it was an amicable suit between the complainants and these defendants. The objection now made to jurisdiction does great injustice to Corcoran & Riggs.

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Foundation.

This was a proper case for an account as between Hill and Corcoron & Riggs. To this account May & Oelrichs were necessary and proper parties.

In such a suit the court has jurisdiction of the whole case.

Ludlow *vs.* Simonds, 2 Cairnes, C. E., 39, 50.

Adams' Eq., Introduction, p. 34.—Account, p. 222.

It is no obstacle to the exercise of such jurisdiction, that damages had to be assessed. They will be assessed before a master. Story's, Eq. Jur., Sec. 794, 795.

The damages consisted almost wholly of interest on money detained, the amount and time of detention being fixed by the injunction suit, and were determined in the manner laid down by the authority just cited.

J. M. CARLISLE,
J. D. McPHERSON,
for Appellee.